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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 58

W. WILLARD WIRTZ, SECRETARY OF LABOR,
PETITIONER

vs.

LOCAL UNION NO. 125, LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA,
AFL-CIO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 3, 1967
CERTIORARI GRANTED MAY 15, 1967

Supreme Court of the United States

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

Civil Action File No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor, PLAINTIFF

v.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

COMPLAINT—Filed February 7, 1964

I.

Plaintiff brings this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 *et. seq.*, 29 U.S.C. 401 *et. seq.* (1958 ed. Supp. IV)), hereinafter referred to as the Act.

II.

Jurisdiction of this action is conferred upon the Court by Section 402(b) of the Act (29 U.S.C. 482(b)).

III.

Defendant Local Union No. 125, International Hod Carriers' Building and Common Laborers' Union of America, hereinafter referred to as Defendant Local, is and at all times relevant to this action has been, an unincorporated association maintaining its principal office at 29 Fifth Avenue in the City of Youngstown, County of Mahoning, State of Ohio, within the jurisdiction of this Court.

[fol. 2]

IV.

Defendant Local is, and at all times relevant to this action has been, a local labor organization engaged in an industry affecting commerce within the meaning of Sections 3(i), 3(j) and 401(b) of the Act (29 U.S.C. 402(i) and 402(j) and 481(b)).

V.

Defendant Local, purporting to act pursuant to and in accordance with the constitution of the International Hod Carriers' Building and Common Laborers' Union of America, hereinafter referred to as the International, and Defendant Local's constitution, conducted an election of officers which consisted of an election held on June 8, 1963, and a run-off election for the office of Business Representative on July 13, 1963. Said elections were subject to the election provisions of Title IV of the Act.

VI.

By letter dated August 11, 1963, a member in good standing of Defendant Local, acting pursuant to and in accordance with the International's constitution and the constitution of Defendant Local filed a protest and appeal to the General Executive Board of the International Union concerning the conduct of the July 13, 1963 run-off election. Having received a final denial of his protest by the General Exeuctive Board by letter dated December 2, 1963 the member on December 9, 1963 filed a timely complaint with the plaintiff herein, alleging violations of Section 401 of the Act (29 U.S.C. 481), all in accordance with Section 402(a) of the Act (29 U.S.C. 482(a)).

[fol. 3]

VII.

Pursuant to Section 402(b) of the Act (29 U.S.C. 482 (b)), Plaintiff proceeded to investigate said complaint and, as a result of facts shown by said investigation, found probable cause to believe that violations of Title IV of the Act had occurred with respect to both elections referred to in paragraph V and had not been remedied at the time of institution of this suit, and that such violations may have affected the outcome of said elections.

VIII.

Defendant Local violated Title IV of the Act regarding the elections conducted on June 8, 1963 and July 13, 1963 in the following respects:

(a) Defendant Local failed to provide adequate safeguards to insure a fair election on June 8, 1963, in violation of Section 401(c) of the Act (29 U.S.C. 481(c)) by permitting unauthorized ballots to be used and counted and by failing to provide adequate safeguards.

(b) Defendant failed to conduct the elections of June 8, 1963 and July 13, 1963 in accordance with its aforesaid applicable constiutional provisions, in violation of Section 401(e) of the Act (29 U.S.C. 481 (e)), as follows:

(1) Members not in continuous good standing were permitted to be candidates in the elections of June 8, 1963 and July 13, 1963;

(2) Members delinquent in dues for April, 1963 were permitted to vote on June 8, 1963;

[fol. 4] (3) Members who had not completed payment of readmission fees were permitted to vote on June 8, 1963;

(4) Members who had not paid the constitutionally required readmission fees were permitted to vote on June 8, 1963;

(5) Members delinquent in dues for May, 1963 were permitted to vote at the July 13, 1963 run-off election;

(6) Members who had not completed payment of readmission fees were permitted to vote at the July 13, 1963 run-off election;

(7) Members who had not paid the constitutionally required readmission fees were permitted to vote at the July 13, 1963 run-off election.

IX.

The violations of Section 401 of the Act (29 U.S.C. 481) found and alleged above may have affected the outcome of the elections of June 8, 1963 and July 13, 1963.

WHEREFORE, Plaintiff prays for judgment.

(a) declaring the following elections to be null and void;

i. the election of its officers held by Defendant Local on June 8, 1963;

ii. the run-off election held for the office of Business Representative held on July 13, 1963;

[fol. 5] (b) enjoining and restraining Defendant Local, its officers, agents, servants, employees, attorneys and all persons in active concert or participation with them from concealing, selling, conveying, transferring, or otherwise disposing of any property or assets belonging to said defendant or in which it has any direct or indirect interest until further order of the Court;

(c) directing the conduct of a new election of officers under the supervision of the plaintiff;

(d) for the costs of this action; and

(e) for such other relief as may be appropriate.

/s/ John W. Douglas
Assistant Attorney General

/s/ Merle M. McCurdy
United States Attorney

/s/ Harland F. Leathers
Attorney, Department of Justice

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CHARLES DONAHUE
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U. S. Department of Labor
Of Counsel

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

vs.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

DEFENDANT'S MOTION TO DISMISS PART OF THE COMPLAINT

OPINION—July 13, 1964

CONNELL, Chief Judge

On February 7, 1964, the Secretary of Labor brought complaint against the defendant union under the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 *et seq.*, 29 U.S.C.A. § 401-530, hereinafter referred to as LMRDA. The plaintiff seeks to void the election of officers in 1963, compel a new election under the aegis of the federal government, and to restrain those presently holding office from disposing of the assets of the union.

From the complaint, the allegations of which we must accept as true for the purposes of this motion, we recognize these uncomplicated facts which have brought this case here. On June 8, 1963, the union held an election; all offices were filled except that of Business Representative, where the vote ended in a tie. Consequently, a runoff election was held on July 13, 1963 for that office alone. After this election, a member in good standing (as yet unnamed) lodged a protest with the union against the conduct of that

[fol. 7] election. Having received a denial of his protest, he filed a timely complaint with the Secretary of Labor, alleging violations of 29 U.S.C.A. § 401. After investigation and consideration, the Secretary instituted this action which complains not only of irregularities in the conduct of that run-off election, but also attacks the first election.

The defendant now moves to dismiss that portion of the complaint which is directed to the election of June 8, 1963, on the ground that the statute (29 U.S.C.A. § 482 (a)[1] permits suit by the Secretary only at the instance of a complaining member who has exhausted his internal avenues of protest. There is no allegation that a member complained internally about the conduct of that June 8 election. The plaintiff resists the motion on three grounds: (1) that the run-off election was such an integral part of the whole election that complaint against it reaches to the entire election; (2) the legitimate inquiry by the Secretary addressed to the election of July 13, 1963, uncovered irregularities which must be corrected in the interest of the [fol. 8] public; (3) The exhaustion of remedies is not an absolute requirement, so the Court in its discretion is empowered to disregard the absence of internal attack upon the election of June 8.

We cannot agree with the Secretary that exhaustion of the member's right of protest within the union against

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[1] § 482. Enforcement—Filing of complaint; presumption of validity of challenged election

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

the run-off election operates to bring the whole election under the scrutiny of the Secretary and the jurisdiction of this Court. The plaintiff argues strongly that the two polls are but two elements of a single transaction, so that attack by the member upon the balloting on July 13 is really an attack upon the entire election. To support this contention, the plaintiff directs the Court's attention to Webster's New Collegiate Dictionary 761 (1961), which defines "run-off" as "a final race, contest, or the like, to decide an earlier one that has ended without a decision in favor of any one competitor." Though this definition, and common sense, establish a strong logical relationship between these two polls, it must be remembered that the complaint is directed against the procedural *conduct* of the election. We cannot assume that on both occasions the identical procedure was utilized by the union. We cannot assume that the irregularity to which the member addressed his complaint about the run-off was present in the initial balloting. Nor can we assume that the member intended to complain about the whole election when he only notified the union that he was dissatisfied with the conduct of the run-off election. Thus the first ground advanced by the Secretary is untenable.

The second and third contentions proffered by the plaintiff are designed to elicit from this Court a favorable construction of § 482(a) in light of the permissive language contained in § 411(a)(4) of the statute. Section 411(a) [fol. 9] (4) states that a member "may" be required to exhaust internal remedies before seeking enforcement of his rights in an administrative or legal proceeding. It is not wholly insignificant that earlier drafts of this "Bill of Rights" contained the word "shall" instead of "may". Cf. Legislative History of Labor-Management Reporting and Disclosure Act, P. 698, H.R. 8342, as reported.[2] In other words, the Secretary would have us read the permissive spirit of § 411, which is the heart of the Act, into § 482, upon which this action is predicated.

As is often the case when a court is confronted with a new statute, our attention is directed to the situation

[2] The next version of the bill, H.R. 8400, substituted "may" for "shall". There is no explanation, however, for the change.

which provoked the LMRDA and the deliberations of the legislative body which enacted the bill. This Act was the result of agitation for legal control over union leadership in order to preserve democracy within unions and to guarantee every union member the right to make his voice heard in the formulation of union policy. One of the most articulate pleas for such legislation was that of then Professor Archibald Cox. In his article "The Role of Law in Preserving Union Democracy", 72 HARVARD LAW REVIEW 609, he specifically rejected one form of proposed legislation, then pending, which gave the government wide powers to regulate the internal affairs of unions:

> The fundamental objection is that it would have turned over to an arm of the federal government the responsibility of carrying on the internal governmental processes of a labor union without any showing that the union officers and members were incompetent and corrupt. Such a measure does not promote freedom or democracy. It reduces self-government. It [fol. 10] denies the private responsibility and self-determination which lie at the heart of a voluntary association. 72 *Harv. L. Rev.* 609, 630.

Commenting upon the problem which the instant case presents, Professor Cox stated:

> Any member who can show that he has pursued in timely fashion the remedies available to him, within the union and any parent body, should be allowed to file a complaint with the Secretary of Labor alleging that a union election violated the statute. Requiring the exhaustion of internal remedies would preserve a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections . . . . *Ibid.*, at 633.

Thus the commentator who urged most strongly the passage of the LMRDA viewed the exhaustion of internal remedies as an integral part of that bill.[3]

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[3] For a contrary view concerning internal remedies, see Montemuro, "The Doctrine of Exhaustion of Union Remedies", 2 Duke

Investigation of the deliberations of Congress further illuminates the viability of the exhaustion doctrine. At no point did the legislators indicate a willingness to abrogate this traditional requirement in favor of summary action by the federal government; on the contrary, we are confronted at every turn with positive, unequivocal expressions of faith in the ability of unions to regulate their own affairs.

> In filing a complaint the member *must* show that he has pursued any remedies available to him within the union and any parent body in a timely manner. This rule preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections. *If* the member is denied relief by the union or [fol. 11], can obtain no decision from the union any way or another within three months, he may complain to the Secretary. S. Rep. No. 187 on S.B. 1555, p. 21; Legislative History of LMRDA, vol. I, p. 417 (emphasis added).

At least the Committee which drew up the report on the bill seemed to think that exhaustion was a condition precedent to action by the Secretary.

At another point in the report, the Committee again expressed its reticence to shackle labor relations with further encumbering interference by the government.

> The provisions of the bill are not to be interpreted as taking the place of, or excusing non-compliance with established standards of proper conduct or any voluntarily adopted labor or management ethical practices code. Nor are they to be interpreted as precluding further voluntary action . . . The committee is convinced that rigid Government controls should be avoided if it is at all possible to do so. It is also convinced that labor and management have considerable ability to regulate their own affairs through their

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B. J. 148 (1952). The author's principal objection, however, is directed against dilatory tactics by the union after it has disciplined a member; that is not our problem.

own voluntary action. S. Rep., supra, p. 23; Legislative History, supra, p. 419.

Thus we are forced to agree with the statement of Judge Wilson in *McGraw* v. *United Association of Journeymen and Pipefitting Industry*, 216 F. Supp. 655,660 (E.D. Tenn., S.D. 1963), that the exhaustion of remedies requirement is based upon a Congressionally approved policy of affording unions the opportunity of correcting their own errors and encouraging union responsibility, initiative and self-discipline. In other words, a complaining member must first seek redress from his peers before inviting the government to champion his cause.[4]

[fol. 12] With this background, we address the other two objections of the plaintiff. The second objection, i.e., that the public interest demands correction of abuses uncovered in the June 8 election, is closely related to the first contention. The secretary seems to say that once he has the right to investigate and correct by suit any aspect of any union election, this grants him *carte blanche* authority to reach all aspects of a union's election procedures. But in this, he fails to distinguish between his right to investigate under the Act and his standing to sue under the Act.

The Secretary is granted broad *investigatory* powers, under 29 U.S.C.A. § 521;[5] to delve into union election

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[4] The court has searched unsuccessfully for any authoritative source in which the exhaustion doctrine has been disparaged or in which it is suggested that courts may disregard it. Cf. Symposium on the Labor-Management Reporting and Disclosure Act 138, 259, 284, 333-336, 505.

[5] § 521. Investigations by Secretary; applicability of other laws

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

[Footnote continued on page 11]

procedure; there is no requirement that the investigation be preceded by a request from a dissatisfied member. In advancing his second objection to the defendant's motion [fol. 13] to dismiss, the plaintiff would have us read the permissive scope of inquiry in § 521 into 482 because the public policy which prompted the inclusion of § 521 in the Act would best be served in this manner. He seeks, in effect, legislation by judicial edict.

To support this contention, the plaintiff cites *Wirtz* v. *Local 191, International Brotherhood of Teamsters, etc.*, 218 F. Supp. 885 (D.C. Conn. 1963), where the Secretary moved to enforce a subpoena duces tecum which had been served on a union pursuant to an investigation under § 521. The union resisted the subpoena on the ground that, since action by the Secretary to secure judicial remedy against an election is conditioned upon complaint by a member who has exhausted internal remedies, and no such showing had been made, the Government should be denied access to union records which might have importance in a subsequent suit. As the Court phrased the question:

> . . . must it be shown that the conditions precedent to the filing of a complaint by the Secretary have been fulfilled in order to permit an investigation by the Secretary and his use of the subpoena power to implement that investigation? 218 F. Supp. 885,886.

In overruling the union's objection, the Court recognized the basic differences between the two provisions: § 482 permits *challenge* of an election by resort to court, while § 521 permits *investigation* of an election. The right to investigate is unfetered by the restrictions surrounding the right to sue.[6]

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[5] [Continued]

(b) For the purpose of any investigation provided for in this chapter, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

[6] The plaintiff relies upon this statement by the Court to support his argument that the interest of the public requires us to ignore the plain wording of the statute:

[Footnote continued on page 12]

[fol. 14] On appeal the Second Circuit Court clearly analyzed the two sections in affirming the decision of the lower court. In dismissing the attempt by the union to read the restrictions of § 482 *into* § 521, the Court had no difficulty in reconciling the two sections because they are directed to two different objectives.

> No conflict is created by reading Section 402 and Section 601 together. Section 402 provides for the Secretary's instituting an action in the courts in behalf of an individual who has complained of a violation of Title IV. Section 601 provides that the Secretary shall "determine the facts relative" to a violation or threatened violation and that he may report the results of his investigation "to interested persons or officials." It may be that some or all of the limitations of Section 402, such as the exhaustion of internal remedies, are relevant to the suit which that section authorizes; there is in Section 601 no similar limitation on the Secretary's power to investigate and report. Presumably the Secretary can bring an action only when a complaint has been filed by an individual member (Section 402). But he can investigate and report without such a complaint. The two sections of the statute can thus be read together and each be given full effect in complete harmony and without any trace of clashing purposes. 321 F. 2d 445,448.

This case, rather than support the plaintiff's position on this issue, proves fatal to his argument; in that case, we

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[6] [Continued]

> But there is far more at stake in protecting democratic election procedures for all members . . . There is nothing ambiguous about the legislative policy in the Labor-Management Reporting and Disclosure Act to advance union democracy . . . Likewise it is clear from legislative history that Congress recognized that since the public interest in safeguarding and improving the electoral process exceeds even that of members, it might be unwise to place too much reliance on its members to vindicate that interest.

Not only is this statement totally unsupported by any reference to the legislative history upon which it purports to be founded, but it is pure dictum and of no avail to the plaintiff in this case.

find a union espousing a position which is the counterpart of the Secretary's position in the instant case. Just as the Connecticut District Court and the Second Circuit Court refused to grant the union's request to read restric-[fol. 15] tions into § 521, we refuse to read those same restrictions out of § 482.

In his solicitous pursuit of the public interest, the Secretary cites *Goldberg* v. *Amalgamated Local Union* 355, 202 F. Supp. 844 (E.D. N.Y. 1962) to further the argument that the public interest permits him to allege violations of the Act not contained in the member's internal protest. But that Court explicitly stated that

> [o]nly after the member of the labor organization has exhausted the remedies available to him under the Constitution and by-laws of the labor organization . . . does the right of the Secretary accrue. 202 F. Supp. 844,846.

Plaintiff here invokes the doctrine of "public interest." Can we place this "public interest" of which the government is here so solicitous above the interest of the individual members of the union? Unions are voluntary associations, organized by workers to promote their common welfare. The sole reason for their existence is to advance the cause of the individual laborer by negotiating from a position of collective strength to secure favorable wages and working conditions. The individual members entrust this strength to the officers of the union, just as the members of this defendant union did by the election of June 8, 1963. It is highly significant that not one voice of protest has been heard from the membership against the conduct of that election. We do not think that the Secretary under the guise of "public interest" may be permitted to complain when the membership has not; to hold otherwise would, in fact, be inimical to true public interest because it would require legislation by judicial fiat. If the members are satisfied, then the government ought to be satisfied.

The third contention advanced by the plaintiff suggests that the Court may, in its discretion, ignore the requirement of internal exhaustion. We disagree. The cases

[fol. 16] where this has been done involved situations where the internal complaint was to be heard by those very people against whom complaint was to be made. Cf., eg., *Calagaz* v. *Calhoun*, 309 F.2d 248 (5th Cir. 1962). This is but a further expression of a basic tenet of American jurisprudence—the law will not require a useless act. It is significant that the cited case and other like it do not involve actions brought by the Secretary under § 482. The Court finds, therefore, that it is without discretion to erase the explicit condition which Congress wrote into the statute.

In addition to these affirmative attacks upon the doctrine of exhaustion of remedies, the plaintiff suggests that the defendant should be estopped from asserting the failure of this condition precedent. Since the union had been directed to investigate a complaint about the July 13 runoff, it is argued, it should then have investigated the election of June 8. We disagree, for the simple reason that no one asked for such an investigation. The purpose of retaining the exhaustion requirement in the LMRDA is to afford the union the first opportunity to police its own behavior; if no complaint is heard, however, no investigation is launched. The statute (29 U.S.C.A. § 472(a)(2)) permits courts, when suit is brought, to presume that an election is valid until the contrary be proven. Thus the burden of proof and the risk of persuasion must be borne by the party which attacks an election. By analogy the union itself should be entitled to make that same presumption; the union can presume that its procedure is correct and need not investigate unless and until a member complains. Thus we hold that the union was not required to [fol. 17] investigate the election of June 8, and the union is not estopped from asserting the failure of a condition precedent to the Secretary's complaint against that election.

/s/ James C. Connell
Chief Judge

July 13, 1964.

[fol. 18]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

vs.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

ORDER—July 14, 1964

UPON CONSIDERATION,

IT IS ORDERED that

Defendant's motion to dismiss part of the complaint is granted.

/s/ James C. Connell
Chief Judge

July 14, 1964.

[fol. 19] MR:ad 8-18-64

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, PLAINTIFF

vs.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

ANSWER—Filed August 19, 1964

The Court, by Order dated July 14, 1964, having sustained defendant's motion to dismiss that portion of the complaint which is directed to the election of June 8, 1963, and the plaintiff not having moved or pleaded thereafter with respect to the original complaint, the defendant now files its answer to those allegations not affected by the order of the Court.

FIRST DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

Defendant admits the allegations contained in paragraphs III, IV and V; admits that on July 30, 1963 a protest was filed concerning the election held in the defendant Union on July 13, 1963 for the office of Business Representative, and that on December 2, 1963 the protest was denied, and alleges it is without knowledge or information [fol. 20] sufficient to form a belief as to the truth of the other allegations contained in paragraph VI of the com-

plaint; alleges further that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VII of the complaint as to the belief shared by the plaintiff, and denies each and every other allegation contained in the said paragraph; and denies the allegations of paragraphs VIII and IX.

WHEREFORE, having fully answered defendant demands that the Court dismiss the complaint and award the defendant its costs herein sustained.

/s/ Mortimer Riemer
Attorney for Defendant
2217 The Illuminating
Building
Cleveland, Ohio 44113
781-8272

[Certificate of Service omitted in printing]

[fol. 21]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

PLAINTIFF'S REQUEST FOR ADMISSIONS—
Filed October 13, 1964

Plaintiff hereby requests defendant, within ten (10) days after service of this request, to make the following admissions for the purpose of this action only, subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That the run-off election held by defendant on July 13, 1963 for the office of Business Representative was subject to the provisions of the Constitution of the International Hod Carriers', Building and Common Laborers' Union of America (hereinafter referred to as the International Constitution), and to the provisions of the Uniform Local Union Constitution of the International Hod Carriers', Building and Common Laborers' Union of America (hereinafter referred to as the Uniform Local Constitution).

2. (a) That Exhibit A annexed to this Request is a true copy of the following provisions of the International [fol. 22] Constitution: Article VIII, Subsections 2(a), 2(a-vi), 2(a-vii), 2(a-viii); Article XI, Section 1; Article XVI, Section 1; Article XVIII, Sections 3, 4, 8.

(b) That each of the aforesaid provisions was in effect at all times between May 1, 1963 and July 13, 1963.

3. (a) That Exhibit B annexed to this Request is a true copy of the following provisions of the Uniform Local Constitution: Article III, Subsections 1(e), 1(h), 2(b), 2(c), 2(e), and 3(i); Article IV, Section 1, and Subsection 3E; Article V, Sections 1 and 11; Article VI, Subsections 1(a), 1(f), 2(a), 2(b), 2(c), 2(d), 2(e), and 3(d); Article VIII, Sections 5 and 7; and Article XII, Section 8.

(b) That each of the aforesaid provisions was in effect at all times between May 1, 1963 and July 13, 1963.

4. That on July 13, 1963, defendant held a run-off election for the office of Business Representative among three candidates, Cecil Dial, Irwin Ferry, and Andrew E. Jackson.

5. That the said run-off election was held because defendant's general election, held on June 8, 1963, had resulted in a tie for the office of Business Representative, between Cecil Dial and Andrew E. Jackson.

6. That Cecil Dial, Irwin Ferry, and Andrew E. Jackson were nominated for the office of Business Representative at a nominations meeting held by defendant on May 1, 1963.

7. That the eligibility of Cecil Dial, Irwin Ferry and Andrew E. Jackson to be candidates and to hold office in defendant Local was determined by an Election Committee, elected at the nominations meeting of May 1, 1963, at a screening meeting held on May 10, 1963.

[fol. 23] 8. That the eligibility of Cecil Dial, Irwin Ferry and Andrew E. Jackson to be candidates and to hold office in defendant Local, under Articles III and V of the Uniform Local Constitution, was determined on the basis of the Reports of defendant's Secretary-Treasurer reflecting transmittal of monthly per capita tax payments to the International for individual members.

9. (a) That Exhibit C annexed to this Request is a true copy of a letter dated February 7, 1963, signed by Jos. V. Moreschi, General President, and Peter Fosco, General Secretary-Treasurer, of the International, and

addressed to all affiliated Local Unions, District Councils and members.

(b) That defendant Local received said letter, or a copy thereof, before its nominations meeting held on May 1, 1963.

10. That the Secretary-Treasurer of defendant Local, during calendar year 1962 and until July 1963, at times remitted per capita tax payments to the International in behalf of individual members who had not made timely payment of their dues.

11. (a) That the Reports of defendant's Secretary-Treasurer reflecting per capita tax payments made to the International in behalf of individual members of defendant Local were not, between May 1, 1963 and July 13, 1963, an accurate indication of whether such individual members were in good standing.

(b) That such Reports were not an accurate indication of whether such individuals had been in good standing for the preceding year.

(c) That such Reports were not an accurate indication of whether such individuals had been members in good standing of the International for the two preceding years.

[fol. 24] 12. That the Election Committee did not, at the screening meeting held on May 10, 1963, examine the ledger cards of those members who had been nominated in order to determine whether they were eligible to be candidates and to hold office in defendant Local.

13. That Cecil Dial holds Book No. 1511 in defendant Local.

14. That the ledger card maintained by defendant for Cecil Dial shows:

(a) That he was a member in good standing of defendant Local on July 13, 1963;

(b) That he was a member in good standing of defendant Local on June 8, 1963;

(c) That he was a member in good standing of defendant Local on May 1, 1963;

(d) That he was continuously a member in good standing of defendant Local during the year preceding May 1, 1963;

(e) That he was continuously a member in good standing of the International during the two years preceding May 1, 1963.

15. That Irwin Ferry holds Book No. 1273 in defendant Local.

16. That the ledger card maintained by defendant for Irwin Ferry shows:

(a) That he made no dues payments for the months of October, November, or December, 1961.

(b) That he paid his dues for September, 1961 on November 1, 1961.

[fol. 25] (c) That after November 1, 1961, he paid no dues until February 27, 1962.

(d) That on February 27, 1962, he made dues payments for two months, and these payments were credited to the months of January and February, 1962.

(e) That he did not pay any readmission fee to defendant Local at any of the times aforementioned, nor at any time between February 27, 1962 and July 13, 1963.

17. That Andrew E. Jackson holds Book No. 3219 in defendant Local.

18. That the ledger card maintained by defendant for Andrew E. Jackson shows:

(a) That he paid no dues for the month of May, 1962.

(b) That after April 16, 1962, he paid no dues until September 24, 1962.

(c) That on September 24, 1962, he paid dues for one month.

(d) That on October 3, 1962, he paid three months dues, which were credited as dues payments, through September, 1962.

(e) That he paid no readmission fee to defendant Local at any of the times aforementioned, nor at any time between October 3, 1962 and July 13, 1963.

19. That at the run-off election held by defendant on July 13, 1963, members listed as paid for the month of May, 1963 in the Secretary-Treasurer's Per Capita Report to the International were deemed to be in good standing and eligible to vote.

[fol. 26] 20. That the following members of defendant Local voted in the run-off election held on July 13, 1963:

Name	Book No.
(a) Robert Lee	1349
(b) William L. Harris	823
(c) Fred Porch	455
(d) James Pittman	1218
(e) Dennis Eley	32
(f) George L. Washington	1041
(g) Ivory Holden	1229
(h) Charles Lee Mackey	2953
(i) Nathaniel Evans	3356
(j) David C. Johnson	2387
(k) Jessie Kelch	305
(l) John Buie	3133
(m) Charles Dickens	272
(n) Roger Fort, Jr.	1034
(o) Warren Goodman	2502
(p) Nathaniel Cheatham	1832
(q) Brawlie Lawrence	2855
(r) Willie E. Baker	1285
(s) Theodore Curtis	2236
(t) John Richardson	2538
(u) Reverend John Hamilton	3014
(v) Antonio Ierici	971
(w) James White	1437
(x) J. S. Copeland	256
(y) Charles Neal, Jr.	3290
(z) Raymond Victor	2877

[fol. 27]

(aa) Mike Reese	3190
(ab) Paul Hilson	60
(ac) Ernest W. Jenkins	1384
(ad) Ben Hall, Sr.	3469
(ae) Samuel H. Collins	9220
(af) Kenneth P. Brown	2122
(ag) Lonzo McPeters	110
(ah) Edward Caldwell	3639
(ai) Elliot Ratliff	1929
(aj) Melvin Douglas	244
(ak) Leroy Cochrane	606

	Name	Book No.
(al)	Sam W. Tomlinson	653
(am)	Mark Miles, Jr.	917
(an)	Anthony LaVolpa	713
(ao)	Clarence Williams	779
(ap)	Louis Robert Moss	901
(aq)	Russell Sipes	3066
(ar)	Cleveland Clark	68
(as)	William Wilson	733
(at)	Charles J. Butcherine	422
(au)	Roosevelt Thomson, Jr.	2103
(av)	Thomas Hollinger	3476
(aw)	Daniel Harris	2899
(ax)	George W. Welch	2603
(ay)	Frank Hawkins	773
(az)	Frank Brindisi	1265
(ba)	Andrew E. Jackson	3219
(bb)	Anderson L. Collier	55
(bc)	James Moffett	1333

[fol. 28]

(bd)	John Eley	364
(be)	James Rivers	1094
(bf)	Willie Woodbridge	530
(bg)	George Jones	3127
(bh)	Charles Peques	1155

21. That the ledger card maintained by defendant for each of the employees named in Request 22 shows the following:

(a) Robert Lee: no payment of dues for the months of March or April, 1963; no payment of any readmission fee on or before July 13, 1963.

(b) William L. Harris: no payment of dues for the months of January, February or March, 1963; no payment of any readmission fee on or before July 13, 1963.

(c) Fred Porch: no payment of dues or readmission fee between October 15, 1962 and July 13, 1963.

(d) James Pittman: payment of readmission fee not completed until after July 13, 1963.

(e) Dennis Eley: payment of readmission fee not completed until after July 13, 1963.

(f) George L. Washington: no payment of dues for April or May, 1963; no payment of any readmission fee on or before July 13, 1963.

(g) Ivory Holden: no payment of dues for the months of November, 1962 through May, 1963; payment for readmission fee not completed until after July 13, 1963.

(h) Charlie Lee Mackey: payment of dues for May, 1963 not made until after July 13, 1963.

(i) Nathaniel Evans: payment of dues for May, 1963 not made until after July 13, 1963.

[fol. 29] (j) David C. Johnson: no payment of dues for any part of 1963 on or before July 13, 1963.

(k) Jessie Kelch: payment of readmission fee not completed until after July 13, 1963.

(l) John Buie: no payment of dues for the month of May, 1963; payment of one month's dues on June 3, 1963, should have been credited to March, 1963, and payment of one month's dues on July 1, 1963, should have been credited to April, 1963; no further payment made until after July 13, 1963.

(m) Charles Dickens: no payment of dues for the months of March or April, 1963; no readmission fee paid on or before July 13, 1963.

(n) Roger Fort, Jr.; no payment of dues for the months of March, April or May, 1963; no readmission fee paid on or before July 13, 1963.

(o) Warren Goodman: dues for May, 1963 not paid until after July 13, 1963.

(p) Nathaniel Cheatham: no dues entries at all.

(q) Brawlie Lawrence: no initiation fee or readmission fee paid before first entry on card, made March 13, 1963.

(r) Willie E. Baker: payment of readmission fee not completed until after July 13, 1963.

(s) Theodore Curtis: no payment of dues for the month of May, 1963; payment of one month's dues on July 1, 1963 should have been credited to April, 1963.

(t) John Richardson: no payment of dues for the month of July, 1962; subsequent payments credited to later months; payment of one month's dues on June 17,

1963 should accordingly have been credited to April, 1963; [fol. 30] no payment of dues for May, 1963 until after July 13, 1963; no readmission fee charged or paid when dues in arrears for more than 60 days.

(u) Reverend John Hamilton: payment of readmission fee not completed until after July 13, 1963.

(v) Antonio Ierici: no payment of dues for the month of May, 1963; no payment of any readmission fee on or before July 13, 1963.

(w) James White: payment of readmission fee not completed until after July 13, 1963.

(x) J. S. Copeland: no payment of dues for the month of May, 1963; no payment of any readmission fee on or before July 13, 1963.

(y) Charles Neal, Jr.: no payment of dues for the months of March or April, 1963; no payment of any readmission fee on or before July 13, 1963.

(z) Raymond Victor: payment of readmission fee not completed on or before July 13, 1963.

(aa) Mike Reese: no payment of dues for the months of January or March, 1963; no readmission fee paid on or before July 13, 1963.

(ab) Paul Hilson: no payment of dues made between March, 1962 and October, 1962, and no readmission fee paid; $10,00 payment made on January 2, 1963 credited as four months' payment instead of two months' payment.

(ac) Ernest W. Jenkins: payment of initiation fee not completed on or before July 13, 1963.

(ad) Ben Hall, Sr.: no payment of dues for month of May, 1963 until after July 13, 1963.

(ae) Samuel H. Collins: no payment of dues for the months of February or March, 1963; no readmission fee paid on or before July 13, 1963.

[fol. 31] (af) Kenneth P. Brown: no payment of dues for the months of November or December, 1962; no readmission fee paid on or before July 13, 1963.

(ag) Lonzo McPeters: dues for the month of May, 1963 not paid until after July 13, 1963.

(ah) Edward Caldwell: no dues paid from August, 1962 through May, 1963; no readmission fee paid on or before July 13, 1963.

(ai) Elliot Ratliff: no payment of dues for the months of February or March, 1963; no readmission fee paid on or before July 13, 1963.

(aj) Melvin Douglas: no payment of dues for the month of March, 1963; subsequent payments credited to later months; hence no payment of dues for the month of May, 1963 until after July 13, 1963.

(ak) Leroy Cochrane: payment of readmission fee not completed until after July 13, 1963.

(al) Sam W. Tomlinson: no dues payments from March, 1962 to February, 1963; no readmission fee paid on or before July 13, 1963.

(am) Mark Miles, Jr.: no payment of dues for the month of May, 1963 until after July 13, 1963.

(an) Anthony LaVolpa: no payment of dues for the month of May, 1963 until after July 13, 1963.

(ao) Clarence Williams: no payment of dues for the months of January or February, 1963 until after July 13, 1963.

(ap) Louis Robert Moss: no payment of dues for the month of May, 1963 until after July 13, 1963.

(aq) Russell Sipes: payment of readmission fee not completed on or before July 13, 1963.

[fol. 32] (ar) Cleveland Clark: no payment of dues for the months of November or December, 1962; no readmission fee paid on or before July 13, 1963.

(as) William Wilson: payment of readmission fee or initiation fee not completed on or before July 13, 1963.

(at) Charles J. Butcherine: no payment of dues for the month of May, 1963 until after July 13, 1963.

(au) Roosevelt Thomson, Jr.: no payment of dues for the month of May, 1963 until after July 13, 1963.

(av) Thomas Hollinger: no payment of dues for the months of September, October or November, 1962; no readmission fee paid on or before July 13, 1963.

(aw) Daniel Harris: no payment of dues for the months of October or November, 1962; no readmission fee paid on or before July 13, 1963.

(ax) George W. Welch: payment of readmission fee not completed until after July 13, 1963.

(ay) Frank Hawkins: payment of readmission fee not completed until after July 13, 1963.

(az) Frank Brindisi: readmission fee not paid until after July 13, 1963.

(ba) Andrew E. Jackson: payment of dues for the month of June, 1962 not made until September 24, 1962; no readmission fee paid on or before July 13, 1963.

(bb) Anderson L. Collier: no payment of dues for the months of July, August or November, 1962; no readmission fee paid on or before July 13, 1963.

(bc) James Moffett: no payment of dues for the months of April, May or June, 1962, nor for the months of February or March, 1962; no readmission fee paid on or before July 13, 1963.

(bd) John Eley: no payment of dues for the month of May, 1963; no readmission fee paid on or before July 13, 1963.

[fol. 33] (be) James Rivers: no payment of dues for the month of May, 1963; no readmission fee paid on or before July 13, 1963.

(bf) Willie Woodbridge: no payment of dues for the months of June through November, 1962; no readmission fee paid on or before July 13, 1963.

(bg) George Jones: payment of readmission fee not completed on or before July 13, 1963.

(bh) Charles Peques: no payment of dues for the months of April, May or June, 1962; no readmission fee paid on or before July 13, 1963.

22. (a) That 379 members of defendant Local voted in the run-off election held on July 13, 1963.

(b) That the run-off election for the office of Business Representative held by defendant on July 13, 1963 resulted in the following tally: 198 votes for Andrew E. Jackson, 179 votes for Cecil Dial, and 2 votes for Irwin Ferry.

23. That following the run-off election held on July 13, 1963, Andrew E. Jackson was sworn in as the Business Representative of defendant Local.

24. That by letter dated August 11, 1963, Cecil Dial filed a protest and appeal with the General Executive

Board of the International concerning the run-off election held by defendant Local on July 13, 1963.

25. (a) That by letter dated August 16, 1963, the General President of the International acknowledged receipt of the protest and appeal filed with the General Executive Board by Cecil Dial.

(b) That a copy of the said letter of acknowledgment was sent to defendant Local.

(c) That Exhibit D annexed to this Request is a true copy of the said letter of acknowledgment.

[fol. 34] 26. (a) That by letter dated October 1, 1963, from Peter Fosco, General Secretary-Treasurer of the International, Cecil Dial was advised that hearing on his appeal would be held by a Hearings Panel of the General Executive Board on October 24, 1963.

(b) That Exhibit E annexed to this Request is a true copy of the above-described letter.

27. (a) That by letter dated December 2, 1963, from Peter Fosco, General Secretary-Treasurer of the International Cecil Dial was advised that his appeal had been denied by the General Executive Board.

(b) That Exhibit F annexed to this Request is a true copy of the above-described letter.

Dated: October 13, 1964.

/s/ John W. Douglas
Assistant Attorney General

/s/ Merle M. McCurdy
United States Attorney

/s/ Harland F. Leathers
Attorney, Department of Justice

Attorneys for Plaintiff

CHARLES DONAHUE
Solicitor

JAMES R. BEAIRD
Associate Solicitor

AARON A. CAGHAN
Regional Attorney

U. S. Department of Labor
Of Counsel

[Proof of service omitted in printing]

[fol. 35]

EXHIBIT A TO PLAINTIFF'S REQUEST, ETC.

Constitution of the International
Hod Carriers', Building and Common
Laborers' Union of America

ARTICLE VIII

General Executive Board

* * * *

Section 2. POWERS:

(a) Subject to review by the Convention, it shall have authority and control, over all of the executive and judicial powers of the International Union.

* * * *

(a-vi) In interim periods between regular conventions of the International Union, all judicial authority shall reside in the General Executive Board of the International Union; in pursuance of such authority it may impose such judgment or take such action as it deems warranted or appropriate over any circumstance concerning which such action is taken.

* * * *

(a-vii) Delegation of Judicial Powers: The judicial power of the General Executive Board may be delegated to one or more of its members, with authority to hold hearings on appeals, protests, petitions or charges properly filed with the General Executive Board; when so delegated, such member or members of the General Executive Board shall be known as a Hearings Panel. Said Hearings Panel shall, after due notice, hold hearings and from the evidence adduced, make such Findings of Fact and Recommendations as in their judgment they deem proper, which Findings of Fact and Recommendations must then be reported and submitted to the General Executive Board as a whole, for determination and decision.

[fol. 36] (a-viii) Any member or Subordinate Body aggrieved by a decision, direction, ruling or order of the

General Executive Board, shall have the right to appeal therefrom to the Convention of the International Union, provided, within thirty days from the date of notice of said decision, direction, ruling or order, from the General Secretary-Treasurer, the aggrieved member or Subordinate Body shall file an appeal in writing with the International Union, addressed to the General Secretary-Treasurer at Headquarters.

A decision, direction, ruling or order by the General Executive Board on any matter, is final and binding until and unless it is reversed or modified by the following regular Convention.

ARTICLE XI

General Secretary-Treasurer

Section 1. The General Secretary-Treasurer shall receive all monies due and owing to the International Union, including per capita tax, initiation fees, readmission fees and all other lawful fees and assessments payable by affiliated Local Unions and other Subordinate Bodies. He shall give proper receipt for such monies collected.

* * * *

ARTICLE XVI

Membership

Section 1. The qualifications, rights and obligations of members shall be as specifically provided for in Article III, Sections 1, 2 and 3, Article VIII, Section 5 and Article VIII, Section 8 of the Uniform Local Union Constitution.

* * * *

[fol. 37]

ARTICLE XVIII

Obligations of Affiliates

Section 3. Each Local Union shall, through its Secretary-Treasurer, pay to the International Union a per capita tax of $1.00 per member per month, payable for the current month on each member in the Local Union

and an initiation fee of $5.00 for each member registered with the International Union as a member and $2.50 for each member readmitted; each initiation fee and each readmission fee must be accompanied with the per capita tax for the month in which the member is registered or readmitted.

Section 4. If a Local Union fails, neglects or refuses to pay to the International Union the per capita tax, initiation fees, readmission fees or other lawful payments within the time prescribed, it shall thereby be automatically suspended.

* * * *

Section 8. (a) Local Unions shall charge not less than five dollars nor directly or indirectly more than seventy-five dollars as an initiation fee.

(b) Local Unions shall charge, as readmission fee, amounts as provided for in Article VIII, Section 8 of the Uniform Local Union Constitution.

(c) Local Unions shall fix and regulate the dues payable by its members in such amount as is lawful and necessary to carry out its objects, purposes and obligations; such amount shall not be less than three dollars per month. In areas where District Councils exists, said dues shall be fixed and regulated as provided for in Article II, Sections 2(c) and 3 of the Uniform District Council Constitution.

* * * *

[fol. 38]

EXHIBIT B TO PLAINTIFF'S REQUEST, ETC.

Uniform Local Union Constitution
of the International Hod Carriers',
Building and Common Laborers'
Union of America

ARTICLE III

Membership

Section 1. APPLICANTS

* * * *

(e) Such applicant must tender to the Local Union in which he is seeking membership, the initiation fee, dues and other lawful fees and assessments that prevail in said Local Union.

* * * *

(h) No person shall be clothed with or acquire or retain the right of membership unless payment of his initiation fee, readmission fee and per capita tax is received by the International Union when due.

Section 2. RIGHTS OF MEMBERS: In accordance with and subject to all of the provisions of the International Union Constitution and this Constitution, all persons having lawfully acquired membership in the Union, shall be entitled to the following rights:

* * * *

(b) To attend and participate in meetings and functions of the Local Union;

(c) To be a candidate for and hold office or position in the Local Union;

* * * *

(e) To readmission;

* * * *

[fol. 39] Section 3. OBLIGATIONS OF MEMBERS:

* * * *

(i) Each member shall pay to his Local Union such initiation fee, dues, and other lawful fees and assessments as are fixed and established pursuant to constitutional authority.

ARTICLE IV

Officers

Section 1. The officers of the Local Union shall consist of President, Vice-President, Recording Secretary, Secretary-Treasurer, Business Representative, Sergeant-at-Arms, three Auditors and additional members of the Executive Board.

* * * *

Section 3. DUTIES OF OFFICERS:

* * * *

E—BUSINESS REPRESENTATIVE

(a) The Business Representative shall be the recognized representative of the Local Union.

(b) Specifically, but not in limitation thereof:

1. Unless otherwise provided, negotiations with employers shall be through a Negotiating Commitee of the Local Union, of which the Business Representative shall be chairman ex-officio.

2. It shall be the duty of the Business Representative to see to it that the provisions of all agreements are enforced and respected by all persons affected thereby. All instances of non-compliance which are not amicably adjusted by him, shall be reported to the Executive Board of the Local Union.

3. He shall have the power to appoint and supervise Stewards.

4. As Business Representative, he shall be in charge of, direct and supervise the activities of Assistant Business [fol. 40] Representatives, when, because of need of additional men in the field, the Local Union has either appointed or elected them.

5. He shall keep himself informed of all contemplated work to be done within the jurisdiction of the Local Union

and make such pre-job arrangements as may be necessary in order to insure the proper and lawful progress of such work once started and to its conclusion.

6. He shall visit all projects within the jurisdiction of the Local Union in order to ascertain whether or not work is progressing, in accordance with established conditions.

7. He shall be charged with the responsibility of protecting the craft jurisdiction within the territory entrusted to the Local Union by the International Union.

8. He shall use all proper and lawful means of organizing the work coming within the territorial and craft jurisdiction of the Local Union.

9. He shall make a report on his activities and the activities of his assistants, if any, at each meeting of the Local Union and at such other times as the Executive Board of the Local Union may require.

(c) For all monies collected by him in the field, he shall give an official receipt furnished by the International Union, which monies he shall then turn over to the Secretary-Treasurer of the Local Union, as soon as is practicable, and obtain a receipt therefor.

(d) He and his Assistants, if any, shall furnish bond in such sum as the Executive Board of the Local Union shall determine, to indemnify the Local Union against possible financial loss to the Local Union. The premium for such bond shall be paid by the Local Union.

* * * *

[fol. 41]

ARTICLE V

Qualifications for Office

In order to qualify as a candidate for any office in a Local Union, a member:

1. Shall be required to have been in continuous good standing in the International Union for a period of two years and in continuous good standing in the Local Union for a period of one year; these requirements shall not apply in cases when Local Unions have been chartered for a period of less than one year prior to the date of nomination.

* * * *

11. All of the qualifications for office must be present at the time of nomination, as well as at the time of election and during the term of office.

ARTICLE VI

Nomination and Election of Officers

Section 1. NOMINATIONS:

(a) A special meeting, to be known as the "Nomination Meeting," shall be held not less than ten days nor more than twenty days prior to a regular meeting of the Local Union to be held in the month of May of the election year, at which Judges of Election shall be either appointed or elected, by vote of the membership present at such meeting, and at which nominations shall be made for all of the offices or positions to be filled.

* * * *

(f) (i) A member in good standing may be nominated for office in the Local Union.

(ii) Such member shall meet all of the requirements of qualification hereinabove outlined.

[fol. 42] (iii) All members nominated shall be present at the time of nomination, unless absent from the meeting on business for the Local Union, for the District Council, or for the International Union, or excused by a vote of the membership of the Local Union.

* * * *

Section 2. When the nominations have been completed:

(a) The Chairman shall state that the Constitution requires all candidates to appear before the Judges of Election, who shall examine them in order to determine whether or not each candidate possesses all of the qualifications hereinabove provided.

(b) The Judges of Election shall then announce the time and place when such examinations will be made.

(c) Candidates are required to appear at such time and place and be examined.

(d) Any member in good standing wishing to protest the qualification of any candidate or who may have information or data regarding the qualification of a candidate, may also appear before the Judges of Election at the time and place specified.

(e) After the Judges of Election have completed their examination, they shall pass upon and decide whether or not each candidate qualifies, as provided, and prepare their report, which is to be submitted to the regular meeting of the membership in the month of May following the Nomination Meeting.

* * * *

Section 3. ELECTION.

* * * *

[fol. 43] (d) As each member in good standing appears for the purpose of voting, he shall report to the Secretary-Treasurer and identify himself. The Secretary-Treasurer, together with a Judge of Election, shall then determine whether such person is a member in good standing of the Local Union and entitled to vote. As each member is qualified, he shall be required to sign his name and book number on a Membership Voting Register, which Register, when the voting has been concluded, shall then be signed, at the end thereof, by the Secretary-Treasurer and the three Judges of Election.

* * * *

ARTICLE VIII

Initiation Fees, Readmission Fees, Dues and Assessments

* * * *

Section 4. In all instances, the initiation fee shall be not less than five dollars nor more than seventy-five dollars and the dues shall be not less than three dollars per month and the readmission fee shall be in accordance with the provision dealing with readmission fees, as herein provided.

Section 5. The monthly dues are due on the first day of the month and unless paid on or before the last day of the following month, the member shall be considered to be in arrears and suspended without notice.

Section 6. A member who has been in continuous good standing for a period of twenty-five years or more and who has reached the age of sixty-two years and who desires to retire and cease working, shall be entitled to pay a minimum dues of $1.50 per month and thereby continue to maintain his good standing.

[fol. 44] Section 7. The readmission fee for persons who are suspended for nonpayment of dues, assessments or fines to the Local Union and who remain suspended for a period of less than one year, shall be the amount of such assessments or fines in addition to the following: less than three months in arrears, the readmission fee shall be not less than five dollars, plus the current dues; more than three months and less than six months, the readmission fee shall be one-half of the initiation fee, plus the current dues; more than six months and less than nine months, the readmission fee shall be two-thirds of the initiation fee, plus the current dues; more than nine months and less than one year, the readmission fee shall be three-fourths of the initiation fee, plus the current dues. In no case shall the readmission fee be greater than the initiation fee. Once the member has defaulted in the payment of dues, as herein provided, the date of suspension referred to in this Section, shall be the first day after the month for which the member's dues were last paid.

Section 8. Persons in arrears have no right to attend meetings nor any other rights except the right to be readmitted in accordance with the above section. If a member becomes suspended by reason of his own conduct he can only be readmitted through the Local Union of which he was a member when suspended. Readmitted members shall be considered new members from the date of the readmission.

* * * *

ARTICLE XII

Charges, Trials and Appeals

* * * *

[fol. 45] Section 8. The matter of conduct of nomination or election of Local Union officers, officials and delegates is not within the Jurisdiction of the Local Union Trial Board.

Any person aggrieved with the nomination process must appeal directly to the General Executive Board prior to the holding of the election. Any person aggrieved with the conduct of election must protest directly to the General Executive Board within thirty days after the election. All such protests must clearly and specifically set forth the grounds upon which the appellant shall rely.

* * * * *

[fol. 46]

EXHIBIT C TO PLAINTIFF'S REQUEST, ETC.

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

February 7, 1963

(Release # 1—1963)

TO ALL AFFILIATED LOCAL UNIONS,
DISTRICT COUNCILS AND MEMBERS

Greetings:

The General Executive Board, at a recent meeting, was made aware of several complaints and protests regarding payments of constitutional fees, such as dues, initiation fees, readmission fees, et al.

At the outset, it is to be observed that corresponding payments made by Local Unions to the General Secretary-Treasurer of the International Union, such as per capita tax, etc., are received and accepted on the presumption of propriety; namely, that the payments submitted are pursuant to and in accordance with the full intent of constitutional requirements. To illustrate: when the Secretary-Treasurer of a Local Union forwards per capita tax in behalf of a member, the presumption is that the Secretary-Treasurer has received payment of the dues for the particular month, directly from the member. It now appears that, in some instances, Secretaries-Treasurers of Local Unions forward per capita tax to the International Union for certain members who have not paid dues for the corresponding month.

The information further discloses that, in some instances, there has been a practice of so-called "free dues". This has occurred and has been applied to various officers of Local Unions, stewards on jobs, sick members, and for individuals in other categories or capacities.

It must be noted that such offer of per capita tax is definitely improper because it is not based on a payment made

directly by the member to the Local Union and, accordingly, any submission of per capita tax by the Secretary-Treasurer is therefore void, invalid and of no effect. You will also notice that, this being so, the member is not in good standing under the provisions of the Constitution.

In order that this entire area of mistaken and improper activity may be corrected, the General Executive Board, at its meeting held January 9-29, 1963, voted, that in all instances where and when the General Secretary-Treas- [fol. 47] urer, on and after April 1, 1963, finds that per capita tax and other fees submitted by Local Unions, are not based upon corresponding payments directly made by the member to the Local Union, such submission shall be deemed to be invalid, improper and of no effect.

It must be noted, as stated above, that where and when such finding occurs, the result is, that the members affected are not in good standing if the delinquency is for a period longer than that specified and provided for in the Constitution.

Any individual or member rendering service to, or for the Union, may be compensated for such service and if such individual or member then wishes to apply such payment toward dues or other fee, he may do so; the record of the Local Union must, however, indicate that payment was made to the individual or member for services rendered and the record must then also indicate that the individual or member then made payment of the required constitutional dues or fees.

All affiliates and members please take note and abide yourselves accordingly.

Respectfully and fraternally yours,

/s/ Jos. V. Moreschi
JOS. V. MORESCHI
General President

/s/ Peter Fosco
PETER FOSCO
General Secretary-Treasurer

NOTE: Members whose dues have been checked off by the employer, pursuant to a collective bargaining agreement, shall be deemed to have made payment of dues on the date when same were checked off. Delinquency or tardiness by the employer of payment of dues and other proper fees to the Local Union, shall not be considered delinquency on the part of the member affected.

[fol. 48]

EXHIBIT D TO PLAINTIFF'S REQUEST, ETC.

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

August 16, 1963

Mr. Cecil Dial
631 Ridge Avenue
Youngstown, Ohio

Re: Protest and Appeal to the General Executive Board

Dear Sir and Brother:

This will acknowledge receipt of your communication, dated August 11, 1963, in re. the above.

The same has been placed in the file of your appeal.

Fraternally yours,

/s/ Jos. V. Moreschi
JOS. V. MORESCHI
General President

cc: Local Union 125
cc: Columbus, Ohio regional office

[fol. 49]

EXHIBIT E TO PLAINTIFF'S REQUEST, ETC.

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

October 1, 1963

Mr. Cecil Dial
631 Ridge Avenue
Youngstown, Ohio

Dear Sir and Brother:

In the matter of your appeal, dated July 30, 1963, you are officially advised that a hearing on said appeal will be held by a Hearing Panel of the General Executive Board, on October 24, 1963, at the Morrison Hotel, Chicago, Illinois, at 10:00 A.M., or as soon thereafter as the case may be heard.

You may be present at the said time and place if you so desire at your own expense. In the event that no personal appearance will be made, I wish to advise that any document, paper or brief may be submitted for consideration, by promptly forwarding same to this office.

After the hearings have been concluded, the Hearings Panel will prepare Findings of Fact and Recommendations for submission to the General Executive Board as a whole, after which the said Board will make its final decision. When a decision has been made, the General Secretary-Treasurer will advise all concerned by mailing a notice thereof.

Fraternally yours,

/s/ Peter Fosco
PETER FOSCO
General Secretary-Treasurer

cc: Columbus, Ohio, regional office

[fol. 50]

EXHIBIT F TO PLAINTIFF'S REQUEST

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

December 2, 1963

Mr. Cecil Dial
631 Ridge Avenue
Youngstown, Ohio

Dear Sir and Brother:

This is to officially notify you of the following action of the General Executive Board, taken at its meeting held at the Americana Hotel, New York, New York, October 28-November 22, 1963:

"Appeal of Cecil Dial, Local Union 125,
Youngstown, Ohio

"The following is the report of the Hearings Panel in this matter:

'By communication dated July 30, 1963, the appellant protests the election held in the Local Union on July 13, 1963, for the office of Business Representative.

'The appellant entered an appearance. The Local Union was represented.

'After considering the documents and evidence in the file of this case, the Panel

FINDS: 1. That after proper notices and nomination, an election was held in the Local Union on June 8, 1963.

2. That in this election, appellant was one of three candidates listed on the ballot for the office of Business Representative and that the appellant and one of the other two candidates each received 135 votes.

3. That because of the aforementioned tie vote, the membership was sent a 15-day notice that a new election for the office of Business Representative would be held on July 13, 1963.

[fol. 51]

4. That in the election on July 13, 1963, the appellant was the defeated runner-up by a margin of nineteen (19) votes.
5. That appellant's allegation that nine (9) ineligible members voted could not affect the outcome of the election.

'Accordingly, therefore, the Panel

RECOMMENDS: That the appeal be denied.'

"After due deliberation, it is.

VOTED: That the report of the Panel be approved and that the Findings and Recommendation be and the same hereby are adopted."

Fraternally yours,

/s/ Peter Fosco
PETER FOSCO
General Secretary-Treasurer

cc: Columbus, Ohio, regional office

[fol. 52] MR:ad 11-64

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, PLAINTIFF

-vs-

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

ANSWERS TO INTERROGATORIES—Filed November 23, 1964

Comes now defendant Union by Martin, Mason, its Secretary-Treasurer, and submits the following answers to interrogatories served upon it by plaintiff:

Q. 1 Please state the name of the person (or persons) answering these interrogatories, the position he (or they) hold with defendant Local, and the length of time he (or they) has held such position.

A. 1 Martin Mason, Secretary-Treasurer. Ten years.

Q. 2 Did the Election Committee chosen at defendant's nominations meeting of May 1, 1963, before the election of June 8, 1963, examine the qualifications of Cecil Dial, Irwin Ferry, and Andrew E. Jackson in order to deter-
[fol. 53] mine whether they were eligible to be candidates for and to hold the office of Business Representative of defendant Local?

A. 2 Yes.

Q. 3 If the answer to (2) is in the affirmative, at what time and place, and in what manner, did the Election Committee determine the eligibility of the three above-named candidates to run for and to hold the office of Business Representative of defendant Local?

A. 3 May 1, 1963 at the Union Hall, 29 5th Avenue, Youngstown, Ohio. The Election Committee checked the membership book of each candidate. On May 10, 1963 the Election Committee screened each candidate by another check of the membership book, the per capita tax sheet, and by an examination into the qualifications of candidates under Article V of the uniform local constitution.

Q. 4 If the answer to (2) is in the negative, then by whom, at what time and place, and in what manner, was the eligibility of the three named candidates determined?

A. 4 See (2) and (3) above.

Q. 5 Was a determination made, following the election [fol. 54] of July 13, 1963, concerning the eligibility of Cecil Dial, Irwin Ferry, and Andrew E. Jackson to be candidates for and to hold the office of Business Representative of defendant Local?

A. 5 None. The determination was made on May 10, 1963.

Q. 6 If the answer to (5) is in the affirmative, by whom, at what time and place, and in what manner, was such determination made?

A. 6 See (3) and (5) above.

Q. 7 What was the total membership of defendant Local,

(a) on May 1, 1962? A. 967
(b) on May 1, 1963? A. 730
(c) on June 8, 1963? A. 717
(d) on July 13, 1963? A. 729

Q. 8 How many members of defendant Local were automatically suspended for non-payment of dues, pursuant to Article VIII, Section 5, of the Uniform Local Constitution,

(a) Between May 1, 1962 and January 1, 1963? A. 357
(b) Between January 1, 1963 and May 1, 1963? A. 229
(c) Between May 1, 1963 and June 8, 1963? A. 22
(d) Between June 8, 1963 and July 13, 1963? A. 73

[fol. 55] Q. 9 How many members of defendant Local, having been suspended for non-payment of dues, completed payment of their readmission fees,

(a) Between May 1, 1962 and January 1, 1963? A. 21

(b) Between January 1, 1963 and May 1, 1963? A. 22

(c) Between May 1, 1963 and June 8, 1963? A. 20

(d) Between June 8, 1963 and July 13, 1963? A. 10

Q. 10 Were notices of the run-off election held on July 13, 1963 mailed to all members of defendant Local, or only to members in good standing of defendant Local?

A. 10 Notices were sent to all members whose names appeared on the per capita tax sheet and were considered to be members in good standing of the Local Union.

Q. 11 If notices of the run-off election held on July 13, 1963 were sent only to members in good standing of defendant Local,

(a) What was the standard used to determine which members were in good standing?

(b) By whom, and in what manner, was it determined whether such standard had been met by individual members?

A. 11 (a) The per capita tax sheet.

(b) The Secretary-Treasurer of the Local Union.

[fol. 56] Q. 12 At the run-off election held by defendant on July 13, 1963, what identification was required of members seeking to vote?

A. 12 The individual's paid-up membership book and in some instances the quarterly card of the Building and Construction Trades Council of Youngstown, Ohio.

Q. 13 At the run-off election held by defendant on July 13, 1963, by whom and in what manner was the eligibility of members to vote determined?

A. 13 By the Judges of Election and Secretary-Treasurer.

Q. 14 How many members of defendant Local voted in the run-off election held on July 13, 1963?

A. 14 379.

Q. 15 Were any ballots cast in the run-off election of July 13, 1963 voided or invalidated?

A. 15 Yes.

Q. 16 If the answer to (15) is in the affirmative, how many such ballots were voided or invalidated, and for what reason or reasons?

A. 16 This question cannot be answered positively. There were eight (8) "disqualified" ballots and two (2) "challenged" ballots.

[fol. 57] Q. 17 Were any members of defendant Local who presented themselves at the run-off election held on July 13, 1963 refused a ballot upon the ground that they were ineligible to vote?

A. 17 None to my knowledge.

Q. 18 If the answer to (17) is in the affirmative, how many members were thus ruled ineligible to vote, and for what reason or reasons?

A. 18 See answer to (17).

Dated: November 23, 1964

[fol. 58]

[*Duly sworn to by Martin Mason jurat omitted in printing (all in italics)*]

[Certificate of Service omitted in printing]

[fol. 59]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, PLAINTIFF

-vs-

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

ANSWERS TO REQUEST FOR ADMISSIONS—
Filed November 23, 1964

Comes now defendant by Martin Mason, its Secretary-Treasurer, and makes the following admissions to the request for admissions for the purpose of this action only, and subject to all pertinent objections to admissability which may be interposed by counsel at trial:

1. That the run-off election held by defendant on July 13, 1963 for the office of Business Representative was subject to the provisions of the Constitution of the International Hod Carriers', Building and Common Laborers' Union of America (hereinafter referred to as the International Constitution), and to the provisions of the Uniform Local Union Constitution of the International Hod Carriers', Building and Common Laborers' Union of America (hereinafter referred to as the Uniform Local Constitution).

[fol. 60]

A. 1. There is no provision in the International Constitution or in the Uniform Local Constitution dealing with the subject of a run-off election. Therefore, I cannot truthfully admit or deny this request for an admission.

2. (a) That Exhibit A annexed to this Request is a true copy of the following provisions of the International Constitution: Article VIII, Subsections 2(a), 2(a-vi), 2(a-vii), 2(a-viii); Article XI, Section 1; Article XVI, Section 1; Article XVIII, Sections 3, 4 and 8.

(b) That each of the aforesaid provisions was in effect at all times between May 1, 1963 and July 13, 1963.

A. 2 (a) It is except that subsection 2(a-vi) omits the second paragraph of said subsection.

A. 2 (b) They were.

3. (a) That Exhibit B annexed to this Request is a true copy of the following provisions of the Uniform Local Constitution: Article III, Subsections 1(e), 1(h), 2(b), 2(c), 2(e), and 3(i); Article IV, Section 1, and Subsection 3E; Article V, Sections 1 and 11; Article VI, Subsections 1(a), 1(f), 2(a), 2(b), 2(c), 2(d), 2(e), and 3(d); Article VIII, Sections 5 and 7; and Article XII, Section 8.

(b) That each of the aforesaid provisions was in effect at all times between May 1, 1963 and July 13, 1963.

A. 3 (a) It is except that Article III, Subsection 2 is incorrect, and the Request for Admission refers to Article [fol. 61] VIII, Sections 5 and 7, but the Exhibit is a copy of Sections 4, 5, 6 and 7.

A. 3 (b) They were.

4. That on July 13, 1963, defendant held a run-off election for the office of Business Representative among three candidates, Cecil Dial, Irwin Ferry, and Andrew E. Jackson.

A. 4. Yes.

5. That the said run-off election was held because defendant's general election, held on June 8, 1963, had resulted in a tie for the office of Business Representative, between Cecil Dial and Andrew E. Jackson.

A. 5. Yes.

6. That Cecil Dial, Irwin Ferry, and Andrew E. Jackson were nominated for the office of Business Representative at a nominations meeting held by defendant on May 1, 1963.

A. 6. Yes.

7. That the eligibility of Cecil Dial, Irwin Ferry and Andrew E. Jackson to be candidates and to hold office in defendant Local was determined by an Election Committee, elected at the nominations meeting of May 1, 1963, at a screening meeting held on May 10, 1963.

A. 7. Eligibility was determined by the Judges of Election.

[fol. 62]

8. That the eligibility of Cecil Dial, Irwin Ferry and Andrew E. Jackson to be candidates and to hold office in defendant Local, under Articles III and V of the Uniform Local Constitution, was determined on the basis of the Reports of defendant's Secretary-Treasurer reflecting transmittal of monthly per capita tax payments to the International for individual members.

A. 8. It was determined in part on the basis of reports of the Union's Secretary-Treasurer.

9. (a) That Exhibit C annexed to this Request is a true copy of a letter dated February 7, 1963, signed by Jos. V. Moreschi, General President, and Peter Fosco, General Secretary-Treasurer, of the International, and addressed to all affiliated Local Unions, District Councils and members.

(b) That defendant Local received said letter, or a copy thereof, before its nominations meeting held on May 1, 1963.

A. 9 (a) It is.

A. 9 (b) It did.

10. That the Secretary-Treasurer of defendant Local, during calendar year 1962 and until July 1963, at times remitted per capita tax payments to the International in behalf of individual members who had not made timely payment of their dues.

A. 10. He did.

[fol. 63]

11. (a) That the Reports of defendant's Secretary-Treasurer reflecting per capita tax payments made to the International in behalf of individual members of defendant Local were not, between May 1, 1963 and July 13,

1963, an accurate indication of whether such individual members were in good standing.

(b) That such Reports were not an accurate indication of whether such individuals had been in good standing for the preceding year.

(c) That such Reports were not an accurate indication of whether such individuals had been members in good standing of the International for the two preceding years.

A. 11 (a) Yes.

11 (b) Yes.

11 (c) Yes.

12. That the Election Committee did not, at the screening meeting held on May 10, 1963, examine the ledger cards of those members who had been nominated in order to determine whether they were eligible to be candidates and to hold office in defendant Local.

A. 12. The Judges of Election checked the per capita tax sheet and the membership book of each candidate for office but did not examine ledger cards.

13. That Cecil Dial holds Book No. 1511 in defendant Local.

[fol. 64]

A. 13. Yes.

14. That the ledger card maintained by defendant for Cecil Dial shows:

(a) That he was a member in good standing of defendant Local on July 13, 1963; A. It does.

(b) That he was a member in good standing of defendant Local on June 8, 1963; A. It does.

(c) That he was a member in good standing of defendant Local on May 1, 1963; A. It does.

(d) That he was continuously a member in good standing of defendant Local during the year preceding May 1, 1963; A. It does

(e) That he was continuously a member in good standing of the International during the two years preceding May 1, 1963. A. It does.

15. That Irwin Ferry holds Book No. 1273 in defendant Local.

A. 15. Yes.

16. That the ledger card maintained by defendant for Irwin Ferry shows:

(a) That he made no dues payments for the months of October, November, or December, 1961. A. It does.

(b) That he paid his dues for September, 1961 on November 1, 1961. A. It does.

[fol. 65]

(c) That after November 1, 1961, he paid no dues until February 27, 1962. A. It does.

(d) That on February 27, 1962, he made dues payments for two months, and these payments were credited to the months of January and February, 1962. A. It does.

(e) That he did not pay any readmission fee to defendant Local at any of the times aforementioned, nor at any time between February 26, 1962 and July 13, 1963. A. It does.

17. That Andrew E. Jackson holds Book No. 3219 in defendant Local.

A. 17. Yes.

18. That the ledger card maintained by defendant for Andrew E. Jackson shows:

(a) That he paid no dues for the month of May, 1962. A. It does.

(b) That after April 16, 1962, he paid no dues until September 24, 1962. A. It does.

(c) That on September 24, 1962, he paid dues for one month. A. It does.

(d) That on October 3, 1962, he paid three months dues, which were credited as dues payments through September, 1962. A. It does.

(e) That he paid no readmission fee to defendant [fol. 66] Local at any of the times aforementioned, nor at any time between October 3, 1962 and July 13, 1963. A. It does.

19. That at the run-off election held by defendant on July 13, 1963, members listed as paid for the month of May, 1963 in the Secretary-Treasurer's Per Capita Report to the International were deemed to be in good standing and eligible to vote.

A. 19. Yes.

A. 20. The individuals named from (a) Robert Lee, Book 1349 to (bh) Charles Peques, Book 1155, voted in the run-off election held on July 13, 1963.

A. 21. The answer to the request for admission 21 (incorrectly stated as request 22) is "Yes", except in the following respects: (aq) Sipes—his payment was completed February 16, 1963; (ac) Jenkins—his payment was completed before July 13, 1963.

22. (a) That 379 members of defendant Local voted in the run-off election held on July 13, 1963. A. Yes.

(b) That the run-off election for the office of Business Representative held by defendant on July 13, 1963 resulted in the following tally: 198 votes for Andrew E. Jackson, 179 votes for Cecil Dial, and 2 votes for Irwin Ferry. A. Yes.

[fol. 67]

23. That following the run-off election held on July 13, 1963, Andrew E. Jackson was sworn in as the Business Representative of defendant Local.

A. 23. Yes.

24. That by letter dated August 11, 1963, Cecil Dial filed a protest and appeal with the General Executive Board of the International concerning the run-off election held by defendant Local on July 13, 1963.

A. 24. Yes.

25. (a) That by letter dated August 16, 1963, the General President of the International acknowledged receipt of the protest and appeal filed with the General Executive Board by Cecil Dial. A. Yes.

(b) That a copy of the said letter of acknowledgment was sent to defendant Local. A. Yes.

(c) That Exhibit D annexed to this Request is a true copy of the said letter of acknowledgment. A. It is.

26. (a) That by letter dated October 1, 1963, from Peter Fosco, General Secretary-Treasurer of the International, Cecil Dial was advised that a hearing on his appeal would be held by a Hearings Panel of the General Executive Board on October 24, 1963. A. He was.

(b) That Exhibit E annexed to this Request is a true copy of the above-described letter. A. It is.

[fol. 68]

27. (a) That by letter dated December 2, 1963, from Peter Fosco, General Secretary-Treasurer of the International Cecil Dial was advised that his appeal had been denied by the General Executive Board. A. He was.

(b) That Exhibit F annexed to this Request is a true copy of the above-described letter. A. It is.

Dated: November 23, 1964.

[fol. 69] MR:ad 11-16-64

[*Duly sworn to by Martin Mason jurat omitted in printing (all in italics)*]

[Certificate of Service omitted in printing]

[fol. 70]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action File No. C64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, PLAINTIFF

v.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

MOTION FOR SUMMARY JUDGMENT BY PLAINTIFF, OR, IN THE ALTERNATIVE, MOTION TO ADVANCE ON TRIAL DOCKET—Filed June 1, 1965

Plaintiff, upon the pleadings herein, plaintiff's interrogatories and request for admissions (including exhibits) and defendant's answers thereto, plaintiff's additional exhibits G through N annexed hereto, and the two memoranda submitted herewith, moves the Court as follows:

1. That the Court enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment in plaintiff's favor for the relief demanded in the complaint, except insofar as said relief concerns that part of defendant's election held June 8, 1963, on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law; or, in the alternative,

2. If summary judgment is not rendered in plaintiff's favor and a trial is necessary, that the Court, pursuant to the authority of Rules 40 and 79 of the Federal Rules of Civil Procedure, and Rule 6 of the Rules of the United

[fol. 71] States District Court for the Northern District of Ohio, advance this case for trial at its earliest convenience.

/s/ John W. Douglas
Assistant Attorney General

/s/ Robert J. Rotatori
Assistant United States Attorney

/s/ Harland F. Leathers
Attorney, Department of Justice

Attorneys for Plaintiff

CHARLES DONAHUE
Solicitor

JAMES R. BEAIRD
Associate Solicitor

AARON A. CAGHAN
Regional Attorney

U. S. Department of Labor
Of Counsel

[Proof of service omitted in printing]

[fol. 72]

PLAINTIFF'S EXHIBIT "H" TO MOTION FOR SUMMARY JUDGMENT

Dec. 7, 1963

631 Ridge Ave.
Youngstown, Ohio

U. S. Department of Labor.

Dear Sir

I, Cecil Dial, am petitioning the Department of Labor to investigate an election held at Local 125 July 13, 1963.

I have exhausted all means in the Constitution. My protest to the General Executive Board was denied. The protest was made Because the election did not comply with the Constitution or the Lander Griffin Bill.

Fraternally yours,

/s/ Cecil Dial

File, Dec. 9, 1963, DLMR Cleveland

[fol. 73]

PLAINTIFF'S EXHIBIT "I-1" TO MOTION FOR SUMMARY JUDGMENT

COPY

I, Martin M. Mason, Secretary-Treasurer, Local 125, Hod Carriers' Union, 29 Fifth Avenue, Youngstown, Ohio do make the following voluntary statement to R. C. DeMarco who has identified himself to me as a Representative of the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor. No threats or promises have been made to induce me to make this statement. I know that this voluntary statement may be used in a Court of Law. ..... initials (initialed MMM)

I have served as Secretary-Treasurer since 1955 and I am one of two full time officers of this Local. At our regular April, 1963 meeting we decided to hold a special meeting on May 1, 1963 to call for nominations for Local Offices. Cards were sent to the Local's members advising of the May 1, 1963 nomination meeting about 18 days before May 1, 1963.

At the May 1, 1963 meeting, William Proverbs, President presided. President and I made statements about the Labor Law requirements, mailing of election notices and the requirements of the Laborers' Constitution. ..... (word deleted—correction initialed) Oral nominations were held to select a three man election *(end of page 1 of 12 hand written pages)*

(beginning of page 2 of 12 pages) committee and a secret vote was taken. Frank Jones Sr. was elected to the position of Election Chairman; Donald Phillips and Harold Thomas were elected as committeemen. Frank Jones Sr. then took over the chair for the conduct of nominations for Local Offices. Nominations were orally from the membership. No restrictions were imposed on nominations and nominations were closed only after no further nominations were made from the membership.

[fol. 74] At the regular meeting, May 15, 1963 the election date was determined. Date of June 8, 1963, by membership motion was selected and the place, Laborers' Hall, and the time, 8:00 AM to 6:00 PM was also determined by the membership by motion. As Secretary-Treasurer, I mailed the election notices to members who were listed as paid for the month of April, 1963 on the Local's per capita records to the International. Notices were mailed (postcard) during the week of May 20, 1963, more than 15 days prior to the June 8, 1963 election date..

..... (words deleted—correction initialed)
On May 10, 1963, the Election Committee, Jones, Phillips and Thomas met with ..... me (word deleted—correction initialed) to screen the candidates. *(end of page 2 of 12 hand written pages)*

(beginning of page 3 of 12 pages)

Candidates were required to complete questionnaires and these questionnaires reviewed and ruled on. Candidates were supposed to be in attendance at the May 10, 1963 meeting and those who failed to attend or failed to complete the questionnaire were disqualified. (word crossed out and initialed) This election committee reported to the membership on May 15, 1963, gave its findings and no objections were noted. Election committee furnished me with a list of candidates listed in the order of nomination and I ordered 1000 ballots from the City Printing Company on May 17, 1963. I picked up the ballots on approximately Thursday, June 6, 1963 and they were packed in two packages. On June 6, 1963 I showed the unopened packages of ballots to the election ..... (word crossed out—correction initialed) committee and the ballots were locked in the ballot box and Chairman Jones kept the key. [fol. 75] I did not make an eligibility list. The International record of per capita payments was used to determine eligibility. Any member whose per capita record of a $1.00 payment for April, 1963 was considered eligible to vote. I am aware that the International Constitution, Article VIII, Section 7 provides for Initiation fees, Readmission fees and Dues *(end of page 3 of 12 hand written pages)*

(beginning of page 4 of 12 pages)

and assessments. Section 5 provides that dues are to be paid on the first day of the month and unless paid on or before the last day of the following month, the member shall be considered to be in arrears and suspended without notice. Our Local dues books issued to our members are stamped, "All members over 2 months in arrears will be suspended without notice on the 1st day of the 3rd month." I am also aware that the International, by letter dated February 7, 1963, directed all Locals not to pay per capita for any member for any month if the member had not paid dues to the Local for the month.

I as Secretary-Treasurer of Local 125 have, on my own initiative, paid per capita tax to the International for members who have not paid dues to the Local. Many of these persons should have been automatically suspended. I am also aware that these persons, delinquent over 61 days, should have been required to pay reinstatement fees to Local 125. According to our Constitution, these members who I have carried by paying their per capita tax who have not paid a reinstatement fee ..... (word deleted —correction initialed) are *(end of page 4 of 12 hand written pages)*

[fol. 76] *(beginning of page 5 of 12 pages)*

not members in good standing and they should not have been permitted to vote in Local 125's election. The reason I carried some of these members by paying per capita tax to the International was so that they would work. Unemployment has been high in Youngstown, Ohio and members don't have the money for dues. I paid their per capita out of the General Funds of the Local. However, many persons have been suspended by me for failure to pay dues. I only paid per capita for members I knew had been unemployed, had been long time .... (word deleted—correction initialed) members and I took into consideration personnel hardships and family situations. I have kept no records of persons that I paid per capita for or who had not paid reinstatement fees. I can only approximate at this time. I estimate that from June, 1962 to May, 1963,

I paid per capita for approximately 50-75 members. Of this number, approximately 31 voted on ..... (word deleted—correction initialed) June 8, 1963 although all could have voted if they chose to do so. Listed herein are the names and membership book numbers of some of the persons who voted in the June 8, 1963 election who were not ..... (word deleted—correction initialed) in good standing as of the June 8, 1963 election day: *(end of page 5 of 12 hand written pages)*

(beginning of page 6 of 12 pages)

Name	Book #
1. Edw. Hall	1338
2. G. L. Washington	xxxx 1041 (correction initialed "MMM")
3. Turner Brown	501
4. Fred Porch	455
5. Fred Zackery	100

[fol. 77]

6. Jessie Kelch	305
7. Ivory Holden	1229
8. Willie E. Baker	1285
9. John Buie	3133
10. Nate Cheatham	1832
11. xxxxxx (deleted—initialed "MMM")	xx Did not vote 6/8/63—voted 11/13/63
12. LeRoy Cochrane	606
13. Charles Dickens	272
14. Denis Eley	32
15. Roger Fort, Jr.	1034
16. Warren Goodman	2502
17. John L. Hunter	2294
18. David C. Johnson	2387
19. Robert Lee	1349
20. James Pittman	1218
21. Stephen Sanders	33
22. Thomas Hopson	467
23. Charlie Lee Mackey	2953
24. xxxxxx (deleted—initialed "MMM")	xx Did not vote 6/8/63—voted 7/13/63

(end of page 6 of 12 hand written pages)

(beginning of page 7 of 12 pages)

Name	Book #
26. Brandie Lawrence	2855
27. Frank Jones, Jr.	595
28. Clarence Williams	779

[fol. 78]

29. George Smith	4679
30. William Wilson	733
31. H. E. Victor	2511

The above list represents members who were either delinquent in payment of April, 1963 dues or were persons who were over 61 days delinquent in dues payments during the past year and had not completed full payment of reinstatement fees.

When I paid per capita to the International for delinquent members, I, on occasion, put stamps in the delinquent members dues books so that the member would not be challenged by job stewards when obtaining a job. For this reason, the members ledger card maintained in the Local Office does not correspond with the members dues book or the per capita payment record.

On election day, June 8, 1963, members displayed the dues book to election judge Jones, and the book checked against the per capita record. Dues book was stamped "voted." A ballot was issued and the back of the ballot was block stamped "Voted." Every ballot cast should have had the block stamp "Voted" on the back. I and Jones checked the per capita record and my secretary, Mrs. Lucille Powell stamped the back of the ballots. A stamp "Voted" was also placed next to the voter's name on the per capita record. .... (word deleted—correction initialed) Voting was accomplished in the Local's offices and election committeemen and candidates observers were in the voting area. At 6:00 P.M. polls were closed. Votes were tallied by the election committee in the presence of observers and the results were announced and posted. Business Representative race resulted in a tie.

Frank Jones Sr. called International Regional Office Manager, Arthur Kistemaker, Columbus, Ohio on June 10, [fol. 79] 1963 for instructions to handle the tie. Jones

was ..... instructed (word deleted—correction initialed) to hold a runoff election listing all candidates for that office. I ordered 1000 new ballots from City Printing on June 24, 1963 and July 13, 1963, 8:00 AM to 8:00 PM was selected as election runoff date and time. Mail notices of the July 13, 1963 election were sent *(end of page 8 of 12 hand written pages)*

NOTE: *Insert on top of Page 9 of 12 hand written pages —inserted at the request of Mason*

"On Friday, July 12, 1963 I picked up the runoff ballots, Jones checked the packages and the ballots were placed in the Local's safe until 8:00 AM, July 13, 1963." (initialed "MMM")

(beginning of page 9 of 12 pages)

prior to the required 15 days. Same election committee conducted the July 13, 1963 runoff and the same system was employed. Members whose per capita was listed as paid for May, 1963 were eligible to vote. Again, ineligible persons were ..... (word deleted—correction initialed) on this per capita record and were, in the main, persons whose per capita was paid by me from the Local's general fund. Listed herein are the names ..... (word deleted—correction initialed) and the membership book numbers of some of the persons who voted in the July 13, 1963 runoff Business Representative election who were not in good standing as per the International Constitution as of July 13, 1963:

Name	Book #
G. L. Washington	1041
Fred Porch	455
Fred Zackery	100
Jessie Kelch	305
Ivory Holden	1229
Willie Baker	1285

[fol. 80]

John Buie	3133
Cleve Clark	68
Charles Dickens	272

Name	Book #
Dennis Eley	32
Roger Fort, Jr.	1034

(end of page 9 of 12 hand written pages)

(beginning of page 10 of 12 pages)

Warren Goodman	2502
John Hunter	2294
David Johnson	2387
Robert Lee	1349
John Pittman	1218
Stephen xxx (deleted—initialed "MMM") Sanders	33
Thomas Hopson	467
C. C. Mackey	2953
W. D. Robinson	196
Brawlie Lawrence	2855
xxxxxx (word deleted—correction initialed)	
Frank Jones, Jr.	595
Clarence Williams	779
George Smith	4679
Nate Evans	3356
Paul Wilson	60
C. J. Butcherine	422

[fol. 81]

Anthony LaVolpa	713
W. W. Wilson	733
Mark Miles	917
Paul Goldston	1174
John F. Hamilton	3014
H. E. Victor	2511

(end of page 10 of 12 hand written pages)

(beginning of page 11 of 12 pages)

The above list represents members who were either delinquent in payment of May, 1963 dues or were persons who were over 61 days delinquent in dues payments during the past year and had not completed full payment of reinstatement fees.

No notices of nominations or elections were sent to persons who were suspended as per capita records during and prior to the periods of these elections. To my knowledge,

no one who presented himself on voting days was denied the opportunity to vote.

I have personally examined the members ledger cards ..... (word deleted—correction initialed) of members listed on pages 6, 7, 9 and 10 of this statement and it appears from these ledger records that the persons named herein were ineligible to vote in the June 8 and July 13, 1963 elections according to the provisions of the International Constitution.

I would like to state that my action in carrying some members by paying their per capita tax without receiving dues from them or reinstatement fees was an act of trying to help long time members who were in financial difficulties and was not done to influence *(end of page 11 of 12 hand written pages)*

[fol. 82] *(beginning of page 12 of 12 hand written pages)* or make eligible, persons voting in these elections. Also, I further realize that those who were suspended were not given an opportunity to vote and as such, it would seem that the per capita payments by me was not uniformly applied. However, I judged each case on its merits and gave relief to those loyal members who requested and needed it. (initialed "MMM" 12/17/63)

I have read and initialed the above pages on Tuesday, December 17, 1963 but have delayed signing this statement until I had an opportunity to discuss the statement and its contents with Arthur Kistemaker, International Regional Office Manager, Columbus, Ohio. I have conferred with Kistemaker on Wednesday, December 18, 1963 and have his concurrence in signing this statement.

(initialed "MMM" 12/18/63)

I have read the foregoing statement consisting of 12 pages and I acknowledge it to be true and correct to the best of my knowledge.

/s/ MARTIN M. MASON
Title: Sec'y Treas. Local 125 Laborers
Date December 18, 1963

Witness:

R. C. DeMarco C/O
LMWP, US Dept. of Labor

(end of page 12 of 12 hand written pages)

[fol. 83]

PLAINTIFF'S EXHIBIT "K" TO MOTION FOR SUMMARY JUDGMENT

Washington Area Office
1156 - 15th St., N.W.

January 27, 1964

Mr. Joseph V. Moreschi, President
Hod Carriers, Building & Common Laborers
Union of America, AFL-CIO
906 - 16th Street, N. W.
Washington 6, D. C.

Dear Mr. Moreschi:

Under the authority of Section 402(b) of the Labor-Management Reporting and Disclosure Act and pursuant to a complaint filed, this Office has conducted an investigation into an election of officers conducted by Local 125, Hod Carriers, Building and Common Laborers Union of America, Youngstown, Ohio on June 8 and July 13, 1963. Section 402(b) prescribes that the Secretary of Labor, after investigation and finding probable cause to believe that a violation of Title IV has occurred and has not been remedied, shall bring civil action against the labor organization within sixty days after the filing of the complaint.

The investigation thus far conducted establishes probable cause to believe that the election conducted by Local 125 violated Title IV in the following particulars:

1. Section 401(c) was violated in that:

   a. the local failed to provide adequate safeguards to insure a fair election on June 8, 1963, by permitting unauthorized ballots to be used and counted, and by failing to provide other adequate safeguards;

2. Section 401(c) was violated in that:

a. members not in continuous good standing were permitted to be candidates on June 8, 1963 and July 13, 1963;

b. members delinquent in dues for April, 1963 were permitted to vote on June 8, 1963;

c. members who had not completed payment of readmission fees were permitted to vote on June 8, 1963;

[fol. 84]

d. members who had not paid the constitutionally required readmission fees were permitted to vote on June 8, 1963;

e. members delinquent in dues for May, 1963 were permitted to vote at the July 13, 1963 runoff election;

f. members who had not completed payment of readmission fees were permitted to vote at the July 13, 1963 runoff election;

g. members who had not paid the constitutionally required readmission fees were permitted to vote at the July 13, 1963 runoff election.

The above violations resulted from the Local's payment of per capita tax to the International for certain persons although the Local had not received dues payments from them. Other persons were not afforded this privilege and were dropped from the rolls per constitutional provisions. It is the policy of this Office in appropriate cases involving possible violation of Title IV to advise the parent union involved of the preliminary results of our investigation in order that an opportunity is presented to the parent union to communicate any additional evidence bearing on the violation or on any action which the parent body proposes to take to remedy the violation.

In order that this investigation may be conducted as expeditiously as possible, it would be appreciated if you would communicate with me by January 31, 1964.

Very truly yours,

VIRGIL J. WOLFE
Area Director

cc: Mr. Martin Mason, Financial Secretary
Local 125, HCL
28 Fifth Avenue
Youngstown, Ohio

CLEVEAO
REG. III
DCO-BET

[fol. 85]

PLAINTIFF'S EXHIBIT "L" TO MOTION FOR SUMMARY JUDGMENT

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

January 31, 1964

United States Department of Labor
Office of Labor-Management and
Welfare-Pension Reports
1156 15th Street, N. W.
Washington 25, D. C.
Attention: Virgil J. Wolfe

Dear Mr. Wolfe:

This will acknowledge receipt of your letter of January 27, 1964, hand delivered to my office the same date, reporting on the Secretary of Labor's investigation of the complaint of Cecil Dial regarding the election of officers conducted by our Local Union 125, Youngstown, Ohio.

In your letter you mention two dates in reference to the protested election conducted by Local Union 125—namely, June 8 and July 13, 1963. Please be advised that it is the position of this International Union that only the July 13th election may properly be investigated and considered by your office under the provisions of Title IV, and that the Secretary of Labor lacks jurisdiction with respect to the June 8, 1963 election.

The Local Union conducted its regular election of officers on June 8, 1963. Under the provisions of Article XII, Section 8, of the Uniform Local Union Constitution, incorporated into Title IV, which is applicable to, and binding upon Local Union 125, its officers and members, "any person aggrieved" with the nomination process must protest same prior to the holding of the election and "any person aggrieved" with the conduct of the election itself must protest directly to the General Executive Board of this International Union "within thirty days after the

election." There was no protest filed with respect to the nomination *prior to* the conduct of the election of June 8, 1963, and there was no protest of the election of June 8 filed with the General Executive Board *within thirty days* after the conduct of same, by any member of Local 125. Accordingly, therefore, under both the provisions of the Constitution and Title IV of the Landrum-Griffin Act, no one sought to invoke the available remedies to protest the June 8, 1963 election, and any further inquiry with respect thereto is without proper constitutional or statutory authority.

[fol. 86] On the other hand, as a result of the tally of votes cast for the office of Business Representative in the June 8, 1963 election, two of the three candidates running for that office received the same number of votes and the Local Union decided that a run-off election should be held. Accordingly, the Local Union conducted a re-run election only for the office of Business Representative on July 13, 1963. Thereafter, and within the thirty day appeal period provided in the Uniform Local Union Constitution, Cecil Dial, one of the candidates for the office of Business Representative, appealed from the election of July 13, 1963. With respect to that appeal, the appellant and the Local Union, after due notice, were afforded the opportunity of appearing before a panel of the General Executive Board where documents and testimony were submitted for consideration by the General Executive Board with respect to the issues raised by the appeal. By communication dated December 2, 1963, a copy of which is in your possession, the General Executive Board notified the appellant, Cecil Dial, that the evidence submitted failed to support his appeal.

With respect to the specific items raised by you in your letter of January 27, 1964, and in view of the above facts the following constitutes the further position of this International Union: As to your item 1(a)—as it relates to the June 8, 1963 election, this matter has not been exhausted and further inquiry is foreclosed by virtue of the provisions of the Uniform Local Union Constitution, and the Landrum-Griffin Act.

As to 2(a)—as it also deals with the June 8, 1963 election, this is governed by our previous position stated above. With respect to the July 13, 1963, election for the office of Business Representative, the only candidates whose continuous good standing would be relevant would be the three candidates running for the one office of Business Representative. At no time was this issue raised in the appeal of Mr. Dial, and no evidence has been submitted by your office to indicate that at the time of the July 13, 1963 election any of the three candidates running for the office of Business Representative were not in good standing.

As to 2(b), 2(c), and 2(d)—as these matters relate to the June 8, 1963 election, further inquiry is foreclosed on the same basis as stated in our position on your item 1.

As to 2(e)—you indicate in vague terms, that delinquent "members" were permitted to vote in the July 13, 1963 run-off election, but you do not indicate who these members were or how many were involved. You will note that in findings (4) and (5) of the General Executive Board's decision of December 2, 1963, that the appellant specifically alleged that 9 ineligible members voted in the July 13, 1963 election, and that the margin of difference between the appellant and the winning candidate for the office of Business Representative was 19 votes. It is clear, [fol. 87] therefore, that on the basis of the evidence presented by the appellant the outcome of the election for the office of Business Representative could not have been affected. Your office has not presented to us any evidence to the contrary.

As to 2(f) and 2(g)—again you state that "members" who had not completed the payment of readmission fees or presumably "members" who had not made any payment of readmission fee were permitted to vote in the July 13, 1963 election. It is impossible to determine whether you include the "members" stated in 2(f) and (g) in the "members" referred to in item 2(e). It has not been brought to our attention by your office, who or how many members fall into your category 2(f) and 2(g), and whether, in fact, all of the persons you refer to in items

2(e), (f) and (g) would be sufficient in number to affect the outcome of the election for the office of Business Representative.

As you well know, from prior experience in Title IV election protests, this International Union stands ready and is willing to cooperate with your office in the effort to see that proper and lawful procedures are followed in the conduct of elections by our affiliated Local Unions. Accordingly, therefore, we request that you submit to us the names of the individuals whom you place in items 2(e), (f) and (g), and if still applicable after your consideration of our position, the basis upon which you conclude that any of the three candidates who ran for the office of Business Representative in the July 13, 1963, re-run election were not in continuous good standing as stated in your Item 2(a). After receipt of this information, I will direct that inquiry be made to verify the information which you have presented and, after such inquiry, in the event your information is verified, the International Union, on its own motion, will restore the case to its docket for reconsideration and action by the General Executive Board.

Very truly yours,

/s/ Jos. V. Moreschi
JOS. V. MORESCHI
General President

[fol. 88]

PLAINTIFF'S EXHIBIT M TO MOTION FOR SUMMARY JUDGMENT

AFFIDAVIT

THE STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

After first being duly sworn, James R. Beaird deposes and says:

I am an Associate Solicitor, in charge of the Division of Labor-Management Laws, Office of the Solicitor, United States Department of Labor. This division renders legal services to the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor.

On or about February 4, 1964, prior to the date the complaint in this case was filed, accompanied by George T. Avery, now Counsel for Labor-Management and Welfare-Pension Litigation in the said Division, I went to the office of Robert J. Connerton, General Counsel for the International Hod Carriers', Building and Common Laborers' Union of America, where we conferred with Mr. Connerton and his assistant, Mr. Arthur Schiller, concerning the violations revealed by this Department's investigation of the election of officers by defendant, Local 125, on June 8, 1963, and the resulting run-off on July 13, 1963.

At that conference we advised Messrs. Connerton and Schiller that in the election held on June 8, 1963, some members who, according to defendant's constitution, were under automatic suspension for non-payment of dues, and who had not paid the readmission fee required for reinstatement, were permitted to vote and to be candidates for office. We pointed out that the investigation revealed that 16 of the 27 candidates running for office on June 8, 1963, were ineligible to be candidates; that one of those ineligible candidates, Andrew Jackson, tied an eligible

[fol. 89] candidate, Cecil Dial, in the number of votes tallied for the office of Business Representative; that in the run-off held on July 13, 1963, the ineligible candidate was the winner; and that several others of the 16 ineligible candidates were winners in the election of June 8th. It was further pointed out that approximately 50 ineligible members voted on June 8; and approximately 60 ineligible members voted on July 13, 1963.

During the conference we discussed the nature of these violations; that they resulted from the practice of the Secretary-Treasurer of defendant Local paying the per capita tax to the International Union from the general fund of the Local in behalf of approximately 75 members who actually were delinquent in their dues; that such practice was contrary to the constitution, and that the International Union had, on February 7, 1963, advised all local unions that such payments were improper and therefore void and invalid; and that eligibility to run for office and to vote was determined upon the per capita tax list, and these delinquent members were therefore erroneously shown as eligible. It was further discussed that such practice was discriminatory since in actuality more than two hundred members were suspended for dues delinquency in the few months before the election, and were thus ineligible to be candidates for office or to vote in the election of officers.

During this conference it was made clear that the foregoing violations were present in the balloting on June 8, 1963, and in the run-off balloting on July 13, 1963, and [fol. 90] the International Union was requested to set aside the whole election, the June 8th balloting as well as the run-off on July 13, which it declined to do.

/s/ James R. Beaird
JAMES R. BEAIRD
Associate Solicitor

Sworn to and subscribed before me, the undersigned authority, on this 30th day of April, 1965.

/s/ R. Cresap Davis

[SEAL]

[fol. 91]

PLAINTIFF'S EXHIBIT N TO MOTION FOR SUMMARY JUDGMENT

AFFIDAVIT

THE STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

After first being duly sworn, Frank M. Kleiler deposes and says:

I am the Director of the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, and my administrative responsibility includes the enforcement of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, hereinafter referred to as the Act, which pertains to the election of union officers.

In enforcing the election provisions of that Title, this Office generally uses the following procedure:

(a) Upon receipt of a complaint from a union member, complaining of the conduct of his union's regularly scheduled election of union officers, an investigation is initiated. The first stages of the investigation are to determine (1) whether the complaining union member is a member in good standing and (2) whether he has complied with the requirements of section 402(a) of the Act with respect to exhaustion or invocation of the remedies available to him under the constitution and by-laws of his union.

(b) If it is found that the complaining union member is a member in good standing and has properly complied with the requirements of section 402(a) with regard to exhaustion or invocation of his union's internal procedures, an investigation of the conduct of the union's election proceedings is made. Upon completion of the investigation, a letter is written to the parent union, with a copy to the local union, pointing out the violations, if any, which were uncovered and which, in our opinion, may

[fol. 92] have affected the election's outcome. This letter invites the union to present any evidence it may have bearing on such apparent violations, and requests the union to advise us of any corrective action it proposes to take to remedy such apparent violations. The violations listed in the letter to the union, in line with this Department's interpretation of section 402 of the Act, are not limited of those complained of by the union member in his initial protest to the union, but include all violations of section 401 of the Act disclosed by the investigation which may have had an effect upon the outcome of the election. In many instances, our investigation has disclosed violations of the Act, other than those complained of by the union member, which may have affected the election's outcome.

(c) If the union refuses to take action to correct the violations, we recommend to the Solicitor of Labor that a suit seeking remedial relief be instituted in the appropriate United States District Court. The complaint in such action is likewise not limited only to those matters raised by the complaining union member in his protest to his union.

This Department, charged with the administration and enforcement of the election provisions of the Act and in line with its long-standing and consistent interpretation of section 402 of the Act—that a valid complaint filed with the Secretary by a union member concerning the conduct of an election opens to investigation and enforcement all phases of that election which are governed by the Act—has instituted numerous court actions, several of which are still pending, in which investigation disclosed violations of section 401 of the Act which had not been included in the complaining member's internal union protest.

[fol. 93] The decision of the Court in this case, granting defendant's motion to dismiss those parts of the complaint which were not specifically included in the complaining member's internal union protest, vitally affects not only several pending cases but the whole Title IV enforcement program of this Department. The principle adopted in that decision would require that this Department leave unchal-

lenged many clear violations of the Act; violations which the particular labor organization has chosen to ignore, and which have no other remedy than through the Secretary, since section 403 of the Act precludes any other form of action to challenge an election already conducted. It is, therefore, of the utmost importance to the administration and enforcement of Title IV of the LMRDA that there be a speedy resolution of the questions involved in the Court's decision.

/s/ Frank M. Kleiler
FRANK M. KLEILER
Director of the Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor

Sworn to and subscribed before me, the undersigned authority, this 24th day of May, 1965.

/s/ R. Cresap Davis
Notary Public

[SEAL]

[fol. 94] MR:ad 7-16-65 1-4

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil No. C 64-99

* * * *

W. WILLARD WIRTZ, Secretary of Labor, PLAINTIFF

-vs-

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

BRIEF IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE TO ADVANCE ON THE TRIAL DOCKET—Filed July 19, 1965

[Omitted in printing]

* * * *

[fol. 95]

EXHIBIT 1 TO BRIEF IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT, ETC.

STATE OF OHIO)
) SS
COUNTY OF FRANKLIN)

AFFIDAVIT OF MARTIN M. MASON

Martin M. Mason being duly sworn deposes and says:

This affidavit is made in opposition to the motion for Summary Judgment filed by the plaintiff against Local 125.

I have read the papers submitted in support of the motion. The plaintiff contends that Andrew Jackson was not in good standing when he was a candidate for office in May and June 1963. In the books of the Union, Jackson paid his April 1963 dues on May 6, 1963 as he had a right to do. This paid him up for April 1963 and Jackson was still in good standing as a member through the month of May. On July 1, 1963, Jackson paid his May and June 1963 dues and he was still a member in good standing for the entire month of July. A copy of Jackson's membership ledger card is attached.

The plaintiff also urges that many members for whom I paid their per capita tax were not eligible to vote. In the Fall of 1962 and Spring of 1963 there was a lot of unemployment in the Youngstown area. A lot of men who had been long time members could not find work. They wanted to remain members and be eligible for any work that came along. They asked me for consideration as in the past to pay their per capita tax and keep their membership alive. This was not a practice I set up but was procedure that had been long established prior to my [fol. 96] coming into office. I did this to help and assist these old time members. I explained this fully in my statement, plaintiff's exhibit "I". I think I should have an opportunity to explain this to the Court by testimony and not have this motion decided on these papers.

Each individual who asked me for consideration was considered based upon his length of unemployment, length of Union membership and family situation. I never considered their eligibility to vote or used this procedure to get votes for one or another candidate. I had no personal interest in the outcome of the run-off election since I had received a clear majority of votes for Secretary-Treasurer at the earlier election in June 1963.

I attended the hearing on October 24, 1963 at Chicago where the protest of Cecil Dial defeated by Jackson was heard. Dial was only able to produce proof of nine (9) ineligible votes which could not affect the outcome of the election.

I also want to say that there is no constitutional provision for a run-off election in case of a tie vote. Therefore the judges of election on instructions from the International Union held another election for this office of Business Representative on notice and with the same candidates. In the second election held on July 13, 1963 Jackson received a majority of the votes cast.

/s/ MARTIN M. MASON

Sworn to before me and subscribed in my presence this 11th day of July, 1965.

/s/ MORTIMER RIEMER
MORTIMER RIEMER, Attorney
Notary Public—State of Ohio
My Commission has no expiration date.
Section 147.03 R. C.

[SEAL]

[fol. 97]

EXHIBIT 1(a)

Date	Total	Paid Thru	Local Dues	I. U. Dues	I. U. Reg. No.
2-23-62	4.00		3.00	1.00	2022
4-16-62	8.00	Mar	6.00	2.00	2950
4-16-62	5.00	Apr	4.00	1.00	2951
9-24-62	5.00		4.00	1.00	5998
10- 3-62	15.00	Sept	12.00	3.00	6276
11-26-62	5.00	Oct	4.00	1.00	6924
1- 4-63	10.00	Dec	8.00	2.00	7527
3- 1-63	5.00	Jan	4.00	1.00	5172
4- 1-63	10.00	March	8.00	2.00	8202
5- 6-63	5.00	Apr	4.00	1.00	8803
7- 1-63	10.00	June	8.00	2.00	9554
9- 3-63	5.00	July	4.00	1.00	20794
10- 1-63	5.00	Aug	4.00	1.00	22127
11- 5-63	5.00	Sept	4.00	1.00	10475

Book No. 3219 JACKSON ANDREW E. 1721 Carter Avenue—Hubbard, Ohio

[fol. 98]

EXHIBIT 1(b)

LOCAL NO. 125

QUESTIONNAIRE ON QUALIFICATIONS FOR OFFICE

1. Date of Initiation in International Union
   Month ..... Year .....
2. When did you become member of Local Union .....
   Month ..... Year .....
3. Are you a citizen? .....
4. Are you literate and competent to perform duties of office for which you are a candidate. .....
   .....
5. (a) Have you been employed or elected to serve as an officer or employee of Local .....? In what capacity ..... What was the last date you were elected or employed? .....
   .....
   (b) If now unemployed, when did you last work at the calling of a Laborer? .....
   .....
   (c) Have you actively sought work as a Laborer?
   .....
   (d) Are you unemployed now due to sickness or disability? .....
   State what sickness ..... What disability? .....
6. Have you been debarred by the local union after trial from holding office, is so, state when and why .....
   .....
7. Are you a member of, or a sympathizer with any organization that has for its purpose, the overthrow of this organization or of the Government of the United States, or of the Dominion of Canada by force or violence, or who intends to use his office, if elected, as a cloak to effect purposes inimical to the scope and policies of this organization? .....
   .....

8. Do you qualify for office under the Constitution as adopted at 14th Convention, October 16-20, 1961, and in accordance with provisions of existing law? .....

.....

9. Do you agree? A candidate must agree to observe, conform and comply with all of the terms and provisions of the International Constitution, the Uniform Local Union Constitution and the Uniform District Council Constitution and all of the rules, regulations, policies, practices and lawful orders and decision adopted and promulgated in the furtherance and administration of the provisions of the said Constitutions. .....

.....

10. Do you agree to refrain from conduct that would interfere with the proper conduct of all business of the organization? .....

.....

11. Do you agree to recognize your responsibility toward the Union as an institution? .....

.....

12. Are you subject to any of the conditions imposed under Section 504 as stated in the Labor-Management Reporting & Disclosure Act of 1959? If so state what part. .....

.....

.....

Signed .....

Address .....

Book No. .....

[fol. 99]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

[File Endorsement Omitted]

STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

AFFIDAVIT—Filed, January 27, 1966

ROBERT J. CONNERTON, being first duly sworn, deposes and says:

I am General Counsel of Laborers' International Union of North America, AFL-CIO, formerly known as International Hod Carriers', Building and Common Laborers' Union of America. I am a member of the bar duly admitted to practice in the Sixth Circuit, United States Court of Appeals, and a resident of the District of Columbia. I maintain my offices at the headquarters of the International Union, 905 - 16th Street, N.W., Washington, D.C.

My duties as General Counsel are set forth in Article IX, Section 18 of the International Union Constitution, a copy of which is attached hereto. The aforesaid section authorizes me as General Counsel to "be present and have a voice in all conventions, conferences, meetings of the General Executive Board or of the International Union" (Page 29, Constitution, Ex. 1 attached).

By virtue of the duties entrusted to me as General Counsel, I am familiar with the contents of and the reasons for promulgating the document attached as Exhibit 2, dated January 17, 1966 addressed to all affiliated local unions, district councils and members, concerning the Right to Vote.

[fol. 100] The International Union has affiliated with it approximately 950 local unions and approximately 500,000 members throughout the United States and Canada.

These affiliated local unions are governed by the provisions of the International Union Constitution and the Uniform Local Union Constitution. The interpretation of the provisions of both constitutions is lodged in the General Executive Board and General President, Article VIII, Section 2(d), Article IX, Section 4 of the International Union Constitution, respectively, and Article I of the Uniform Local Union Constitution. I know that pursuant to the instructions of the General Executive Board the general officers of the International Union caused to be promulgated to all of its 950 affiliates, Exhibit 2.

This formal constitutional interpretation by the General Executive Board binding on all affiliated local unions and officers, reaffirms the democratic principles guaranteed in the unions' constitutions and the Act, that no member in good standing on election day shall be deprived of the right to vote.

/s/ Robert J. Connerton
ROBERT J. CONNERTON

SWORN TO BEFORE ME, and subscribed in my presence, this 27th day of January, 1966.

/s/ Agnes K. Driscoll
AGNES K. DRISCOLL
Notary Public
My Commission Expires April 2, 1968

[SEAL]

[fol. 101]

EXHIBIT 2 TO AFFIDAVIT

[Letterhead of International Hod Carriers' Building and Common Laborers' Union of America omitted in printing]

January 17, 1966

TO ALL AFFILIATED LOCAL UNIONS, DISTRICT COUNCILS AND MEMBERS

RE: Right to Vote

Dear Sirs and Brothers:

The General Executive Board, at its November 29-December 10, 1965 meeting was made aware of a grave danger to our membership, which has developed as a result of a *misinterpretation* of the Uniform Local Union Constitution and Release # 1 of 1963, and which is threatening to deprive many members of long standing of their rights and benefits under the Union's Constitution and collective bargaining agreements, particularly the right, otherwise available, under the Union's Constitution to vote in the Union's general election for the candidate of their choice.

The General Executive Board was presented with the issue of whether or not members in good standing *on the day of election* must be deprived of their right to *vote on election day* because at one time or another during the course of their membership, dues which they offered late were accepted by the Local Union, and the Local Union remitted per capita tax within the Constitutional period to the International Union, as a result of which the member's good standing was not, in fact, interrupted.

The General Executive Board, for years, knew of a long-standing practice in many Local Unions where per capita tax payments were being improperly forwarded to the International Union by Local Unions. Release # 1 of 1963 was directed principally toward advising Secretary-Treas-

urers of Local Unions on the proper conduct of their office, the payment of dues and the persons on whose behalf per capita tax should be forwarded to the International Union. However, nothing contained in Release # 1 nor in the Union's Constitution, stated in terms or inferred, that such a member whose good standing was not interrupted should be deprived of his legal and Constitutional right, otherwise available, to vote when he approached the polling place on election day. Nor was this, in fact, the intent of the General Executive Board in issuing Release # 1, nor of the drafters of the Uniform Local Union Constitution.

Indeed, to the contrary, the Board had consistently maintained the position throughout the years, that its Constitution must be interpreted as a *living document* in the light of the Union's history and tradition—giving due regard to its unique and real needs—not from a formalistic standpoint. It was never the intention of the Union [fol. 102] in adopting its Constitution, or of the General Executive Board in issuing Release # 1 or in otherwise interpreting its Constitution to *deprive members* of their right to vote. The Board had always interpreted its Constitution liberally to preserve the right of members to vote. Particularly, in dealing with problems in the election area, the Board had always placed substantial requirements over form. The Board will continue to adhere to this view.

The Board was troubled by the misinterpretation of the Constitution and Release # 1, which threatens to deprive wholesale numbers of members of their right to vote under the Union's Constitution and the Act. First, it felt that such an interpretation was unduly infringing upon the prerogative of the Board to interpret its Constitution in a fair and responsible manner in the interest of the membership, and was seeking to substitute the judgment of persons outside the Union on the meaning of the Union's Constitution for that of the Union's governing body, which had been elected by the membership and charged with that responsibility.

But, in the Board's view, the principal vice of this hyper-technical interpretation was that it completely ignored the unique, real problems confronting the Union and its membership.

The Board in interpreting its Constitution, is charged with the responsibility of giving due regard to the unique problems confronting the membership.

In issuing Release # 1, it was attempting to instruct its Locals on solid financial practices to promote their long run interests. The Board adheres to that view and is in no way attempting to relieve Secretary-Treasurers from their obligations. The Board knew then and it knows now that if its Constitution was construed to disenfranchise such members, a very substantial percentage of the total membership would be deprived of their right to vote. It knew then and it knows now that if such a harsh interpretation was placed upon the Union's Constitution, it would result in depriving many tens of thousands of their members and their families of death benefits built up over the year and of pension rights under collective bargained pension plans throughout this country. Moreover, it knows that if the Union were to adopt the interpretation urged, it could only suspend those members which would simply mean that they would lose their benefits, accruing over the years and be required to pay a new initiation fee under the Union's Constitution as a new member. The Board flatly rejected the opportunity for the International Union collecting such a financial windfall and it instructed the Executive Officers to advise each affiliate of the following action and take whatever possible actions are necessary to defend the right of the membership to act in that regard.

After due consideration, the Board

"VOTED: In accordance with the power and authority vested in it by the International Union Constitution, Uniform Local Union Constitution, and Uniform District Council Constitution, that its Constitutional provisions shall not be inter-

[fol. 103] preted to deprive members of their legal and constitutional right to vote in those instances where local unions have accepted dues late and remitted per capita tax within the Constitutional period to this International Union, so that the local unions were never notified by the International Union that such members were suspended. To the extent that anything contained in Release # 1 of 1963 can be construed to reach a contrary conclusion or to cast doubt upon this position, it is hereby modified to that extent nunc pro tunc."

All affiliates and members please take note and abide yourselves accordingly.

Respectfully and fraternally yours,
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA

/s/ Jos. V. Moreschi
JOS. V. MORESCHI
General President

/s/ Peter Fosco
PETER FOSCO
General Secretary-Treasurer

[fol. 104]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

-vs-

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

MEMORANDUM OPINION—Filed April 1, 1966

BATTISTI, J.:

On June 8, 1963, defendant held a general election of officers. In this election the vote for the office of Business Representative resulted in a tie between two of the three candidates, those two being Cecil Dial and Andrew E. Jackson. On July 13, 1963, defendant held a run-off election for the office of Business Representative. In the run-off election Andrew E. Jackson received 198 votes, Cecil Dial received 179 votes, and Irwin Ferry received 2 votes.[1] Subsequent to the July 13 election, Andrew Jackson was sworn in as Business Representative of the defendant.

On August 11, 1963, Cecil Dial, acting pursuant to defendant's constitution, protested the conduct of the run-off election to the General Executive Board of the International Hod Carriers' Building and Common Laborers' [fol. 105] Union of America. This protest was denied by the General Executive Board on December 2, 1963. On December 9, 1963, Dial filed a complaint with the Secretary of Labor. Upon receipt of Dial's complaint the Sec-

[1] Mr. Ferry was the third candidate in the June 8 election.

retary investigated both the June 8, 1963, general election and the July 13, 1963, run-off election.

On February 7, 1964, the Secretary filed the present action under the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. §§ 401-530 (hereinafter referred to as the Act) seeking an order setting aside the June 8, 1963, general election and also the July 13, 1963, run-off election. In his complaint the Secretary alleged *inter alia* that the defendant had violated Section 401 of the Act (29 U.S.C.A. § 481) in that it had failed to conduct the two elections in accordance with its constitution and bylaws. The Secretary further alleged that these violations may have affected the outcome of the two elections.

In a memorandum opinion dated July 13, 1964, Chief Judge Connell granted the defendant's motion to dismiss that portion of the complaint directed to the general election of June 8, 1963. *Wirtz* v. *Local No. 125, International Hod Carriers' Building and Common Laborers' Union of America*, 231 F.Supp. 590 (1964). In dismissing that portion of the complaint, Judge Connell found that since no member of the defendant had complained internally about the conduct of the June 8 election, the Secretary's allegations with regard to said election were not, as [fol. 106] required by Section 402 of the Act (29 U.S.C.A. § 482),[2] predicated upon a complaint by a union member who had exhausted his internal remedies.

The Secretary has now moved for summary judgment with regard to that portion of his complaint directed to

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[2] Section 402 of the Act (29 U.S.C.A. § 482) provides in pertinent part as follows: (a) A member of a labor organization—(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of Section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). * * * (b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedies, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization. * * *

the run-off election of July 13. In the alternative, the Secretary moves that the action be advanced on the trial docket.

As has already been noted, the Secretary alleges that defendant, in violation of Section 401(e) of the Act (29 U.S.C.A. § 481(e)), failed to conduct the July 13 election in accordance with the applicable provisions of its constitution and bylaws. Specifically, the Secretary alleges that the defendant (1) permitted ineligible candidates to run for office, and (2) permitted persons to vote who were ineligible to do so.

[fol. 107] Section 401(e) of the Act (29 U.S.C.A. § 481(e)) provides in pertinent part as follows:

> (e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. * * * Each member in good standing shall be entitled to one vote. * * * The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

It is clear, and the defendant does not urge otherwise, that the run-off election of July 13 comes within the purview of Section 401(e) of the Act. The alleged violations of Section 401(e) will be considered separately below.

ALLOWING INELIGIBLE PERSONS TO VOTE IN THE JULY 13 ELECTION.[3]

Article VIII of Local 125's constitution provides in pertinent part as follows:

> "Section 5. The monthly dues are due on the first day of the month and unless paid on or before the last day of the following month, the member *shall be* [fol. 108] *considered to be in arrears and suspended without notice.* (Emphasis supplied.)
>
> * * * *
>
> "Section 7. The readmission fee for persons who are suspended for nonpayment of dues, assessments or fines to the Local Union and who remain suspended for a period of less than one year, shall be the amount of such assessments or fines in addition to the following: * * * [figures omitted] * * * Once the member has defaulted in the payment of dues, as herein provided, the date of suspension referred to in this section, shall be the first day after the month for which the member's dues were last paid.
>
> "Section 8. *Persons in arrears have no right to attend meetings nor any other rights except the right to be readmitted in accordance with the above section* [Section 7]. If a member becomes suspended by reason of his own conduct he can only be readmitted through the Local Union of which he was a member when suspended. Readmitted members shall be considered new members from the date of their readmission. (Emphasis supplied.)

It is on the basis of the above-quoted portions of Article VIII of the defendant's constitution that the Secretary predicates his claim that certain ineligible persons voted in the July 13 election. The Secretary urges that under

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[3] It is clear that the portion of the Secretary's complaint directed to the matter of the eligibility of voters in the July 13 election is, as required by Section 402 of the Act (29 U.S.C.A. § 482), predicated upon a complaint by a member of the defendant who has exhausted his internal remedies.

the clear and unambiguous language of Article VIII a member who has not paid his dues within the time provided by Section 5 is automatically in arrears and should be suspended without notice. The Secretary further urges that once a member has fallen in arrears, he loses all rights except the right to be readmitted in accordance with Section 8 of defendant's constitution and, therefore, is not entitled to vote in union elections unless and until he has paid the mandatory readmission fee.

[fol. 109] Article XVIII, § 3, of the International Constitution provides as follows:

> Section 3. Each Local Union shall, through its Secretary-Treasurer, pay to the International Union a per capita tax of $1.00 per member per month, payable for the current month on each member in the Local Union and an initiation fee of $5.00 for each member registered with the International Union as a member and $2.50 for each member readmitted; each initiation fee and each readmission fee must be accompanied with the per capita tax for the month in which the member is registered or readmitted.

It is clear from the defendant's answers to the plaintiff's interrogatories that defendant maintains "per capita tax sheets" reflecting payments made to the International pursuant to Article XVIII, § 3, of the International Constitution.

At the July 13 election, members listed as paid for the month of May, 1963 on the Secretary-Treasurer's per capita tax sheets were deemed to be in good standing and, thus, eligible to vote. (Admission 19.) These per capita tax sheets did not, however, accurately reflect the names of those persons who were actually in good standing as of July 13. (Admission 11.) Said sheets were inaccurate because the Secretary-Treasurer of the defendant had paid the per capita tax for certain persons who were delinquent in the payment of their May, 1963 dues and also for certain persons who had either not paid or had not completed payment of mandatory readmission fees. Thus, of the 379 persons voting in the July 13 election, 58 were

delinquent in their payments to the union. (See responses to plaintiff's request for admissions Nos. 20 and 21.)[4] [fol. 110] Mr. Martin M. Mason, Secretary-Treasurer of the defendant, has, by way of affidavit, stated as follows:

> "The plaintiff also urges that many members for whom I paid their per capita tax were not eligible to vote. In the fall of 1962 and spring of 1963, there was a lot of unemployment in the Youngstown area. A lot of men who had been long-time members could not find work. They wanted to remain members and be eligible for any work that came along. They asked me for consideration as in the past to pay their per capita tax and keep their membership alive. This was not a practice I set up but was procedure that had been long established prior to my coming into office. I did this to help and assist these old time members. I explained this fully in my statement, plaintiff's exhibit "I". I think I should have an opportunity to explain this to the Court by testimony and not have this motion decided on these papers." (Defendant's exhibit 1.)

It might be noted that in plaintiff's exhibit I, the statement referred to in the above-quoted portion of Mr. Mason's affidavit, Mr. Mason stated in part as follows:

> "I as Secretary-Treasurer of Local 125 have, on my own initiative, paid per capita tax to the International for members who have not paid dues to the Local. Many of these persons should have been automatically suspended. I am also aware that these persons, delinquent over 61 days, should have been required to pay reinstatement fees to Local 125. According to our constitution, these members I have carried by paying their per capita tax who have not paid a reinstatement fee are not members in good standing and they should not have been permitted to

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[4] As to 13 of the 58, the facts giving rise to an obligation to pay a readmission fee are not readily apparent. See Admissions 21(d), (e), (k), (l), (u), (w), (z), (ak), (as), (ax), (ay), (az), (bg).

vote in Local 125's election. The reason I carried some of these members by paying per capita tax to the International was so that they would work. Unemployment has been high in Youngstown, Ohio, and members don't have the money for dues. I paid their per capita out of the General Funds of the Local. However, many persons have been suspended by me for failure to pay dues. I only paid per capita for [fol. 111] members I knew had been unemployed, had been long time members and I took into consideration personal hardships and family situations. I have kept no records of persons that I paid per capita for or who had not paid reinstatement fees."

Prior to the July 13 election it had been called to the attention of the International that the Secretary-Treasurers of certain locals were forwarding per-capita tax payments to the International for certain persons who were delinquent in payments to the local. On February 7, 1963, in a letter addressed to all affiliated local unions, district councils, and members, the General President and the Secretary-Treasurer of the International made the following comments with regard to this practice:

> The General Executive Board, at a recent meeting, was made aware of several complaints and protests regarding payments of constitutional fees, such as dues, initiation fees, readmission fees, et al.
>
> At the outset, it is to be observed that corresponding payments made by Local Unions to the General Secretary-Treasurer of the International Union, such as per capita tax, etc., are received and accepted on the presumption of propriety; namely, that the payments submitted are pursuant to and in accordance with the full intent of constitutional requirements. To illustrate: when the Secretary-Treasurer of a Local Union forwards per capita tax in behalf of a member, the presumption is that the Secretary-Treasurer has received payment of the dues for the particular month, directly from the member. It now appears that, in some instances, Secretaries Treasurers of Local Unions forward per capita tax to the Inter-

national Union for certain members who have not paid dues for the corresponding month.

The information further discloses that, in some in-
[fol. 112] stances, there has been a practice of so-called "free dues". This has occurred and has been applied to various officers of Local Unions, stewards on jobs, sick members, and for individuals in other categories or capacities.

It must be noted that such offer of per capita tax is definitely improper because it is not based on a payment made directly by the member to the Local Union and, accordingly, any submission of per capita tax by the Secretary-Treasurer is therefore void, invalid and of no effect. You will also notice that, this being so, the member is not in good standing under the provisions of the Constitution.

In order that this entire area of mistaken and improper activity may be corrected, the General Executive Board, at its meeting held January 9-29, 1963, voted, that in all instances where and when the General Secretary-Treasurer, on and after April 1, 1963, finds that per capita tax and other fees submitted by Local Unions, are not based upon corresponding payments directly made by the member to the Local Union, such submission shall be deemed to be invalid, improper and of no effect.

It must be noted, as stated above, that where and when such finding occurs, the result is, that the members affected are not in good standing if the delinquency is for a period longer than that specified and provided for in the Constitution.

* * * *

All affiliates and members please take not and abide yourselves accordingly. (Plaintiff's exhibit C)

It is manifestly clear that the Secretary-Treasurer of the defendant failed to comply with International Union's directive of February 7, 1963. In fact, he acted directly contrary to the instructions contained therein. It is fur-

ther clear that by using the Secretary-Treasurer's per-capita tax reports to determine voter eligibility for the July 13 election, 58 persons were permitted to vote not-[fol. 113] withstanding the fact that they were delinquent in their payments to the defendant. (Admissions 20, 21.)

Were the 58 persons who were delinquent in their payments to the defendant union eligible to vote in the July 13 election? In answering this question, we must look to the constitution of the defendant union. In 87 Corpus Juris Secundum, *Trade Unions*, § 13, p. 776, the following observations are made relative to the construction of union constitutions:

> "Trade union constitutions should be read in their living context. The interpretation or construction of the constitution and laws of a union is for the union, through its appropriate board or officers; and the courts will accept such interpretation, as long as there is no claim of fraud, and as long as the officer or body on which this power of interpretation has been conferred does not substitute legislation or amendment for construction, does not transgress the bounds of reason, common sense, or fairness, or act arbitrarily, or contravene public policy or the law of the land, or destroy the property or contractual rights of, the members. Where the language of a rule is clear, no official may nullify it under the guise of interpretation."

As has already been noted, the Secretary urges that under the clear and unambiguous language of the defendant's constitution the 58 persons referred to above were ineligible to vote in the July 13 election.

Article VIII, § 5, of defendant's constitution clearly and explicitly provides that where a member fails to make a timely payment of dues he "shall be considered in arrears and suspended without notice." In answering plaintiff's interrogatories, defendant has indicated that a substantial [fol. 114] number of its members have at one time or another been automatically suspended, pursuant to Article VIII, § 5, for non-payment of dues. Further, the International's directive of February 7, 1963, (quoted on page

8, supra) clearly indicates that a Local is obligated to suspend a member who fails to make a timely payment of his dues.[5]

The Court finds that under the clear and unambiguous language of Article VIII, § 5, members who fail to make a timely payment of their dues are automatically in arrears and should be suspended without notice.

Under the clear and unambiguous language of Article VIII, § 5, a member who has fallen in arrears has "no rights except the right to be readmitted in accordance with Article VIII, § 7." To be readmitted "in accordance with" Article VIII clearly requires that the member pay the established readmission fee. Thus, the Court finds that under defendant's constitution once a member has fallen in arrears and has thereby lost his rights, he may only regain the same by paying the established readmission fee. Moreover, there is no provision in the defendant's constitution which gives the Secretary-Treasurer of the Local the right to waive the required readmission fee.

[fol. 115] As has previously been noted, 58 of the persons who voted in the July 13 election were either delinquent in the payment of their May, 1963 dues or had not paid or completed payment of mandatory readmission fees. The Court finds that these persons were not, under any reasonable construction of defendant's constitution, members in good standing and, therefore, were ineligible to vote in said election.

Defendant has urged that plaintiff's motion for summary judgment should be denied for the reason that there is an unresolved question of fact as to whether the practices followed by the defendant were reasonable. Defendant's position seems to be that even if it did not follow

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[5] Between May 1, 1962, and January 1, 1963, 357 members were so suspended; between January 1, 1963, and May 1, 1963, 229 were so suspended; between May 1, 1963, and June 8, 1963, 22 were so suspended; between June 8, 1963, and July 13, 1963, 73 were so suspended. (Defendant's answers to plaintiff's interrogatory No. 8.) The substantiality of these figures is readily apparent when viewed in relation to total membership figures. Defendant has indicated that it had 967 members on May 1, 1962, 730 on May 1, 1963, 717 on June 8, 1963, and 729 on July 13, 1963. (Defendant's answers to plaintiff's interrogatory No. 7.)

the eligibility standards of its constitution and bylaws, it must nonetheless be determined whether the standards actually followed were reasonable. This position lacks merit, for it seems clear that one of the basic purposes behind the election provisions of the Act was to require unions to comply with the provisions of their constitution and bylaws in the conduct of their elections. Where, as here, the conduct complained of cannot be justified under any reasonable construction of the union's constitution or bylaws, it would be most anomalous to hold that the conduct did not violate the Act because it was, in some abstract sense, "reasonable." [6]

[fol. 116] On January 27, 1966, the Court heard oral arguments on the plaintiff's motion for summary judgment. On that date counsel for the defendant presented to the Court a copy of a directive of the International Union dated January 17, 1966, and addressed to all local unions, district councils and members. The directive reads as follows:

"*RE: Right to Vote*"

"Dear Sirs and Brothers:

"The General Executive Board, at its November 29-December 10, 1965 meeting was made aware of a grave danger to our membership, which has developed as a result of a *misinterpretation* of the Uniform Local Union Constitution and Release # 1 of 1963, and which is threatening to deprive many members of long standing of their rights and benefits under the Union's Constitution and collective bargaining agreements, particularly the right, otherwise avail-

[6] It is clear from Mr. Mason's affidavit that special consideration was given to only those delinquent members who Mr. Mason felt were deserving; and, further, that in granting such special consideration Mr. Mason was not acting pursuant to any authority granted to him by the defendant's constitution or bylaws. Further, Mr. Mason did not maintain records pertaining to his actions. If the Court was required to view the conduct complained of herein in the abstract, it would be forced to conclude, on the basis of the affidavits, admission and answers to plaintiff's interrogatories, that said conduct was, as a matter of law, unreasonable.

able, under the Union's Constitution to vote in the Union's general election for the candidate of their choice.

"The General Executive Board was presented with the issue of whether or not members in good standing *on the day of election* must be deprived of their right to *vote on election day* because at one time or another during the course of their membership, dues which they offered late were accepted by the Local Union, and the Local Union remitted per capita tax within the Constitutional period to the International Union, as a result of which the member's good standing was not, in fact, interrupted.

"The General Executive Board, for years, knew of a long-standing practice in many Local Unions where per capita tax payments were being improperly forwarded to the International Union by Local Unions. Release # 1 of 1963 was directed principally toward advising Secretary-Treasurers of Local Unions on the proper conduct of their office, the payment of dues and the persons on whose behalf per capita tax should be forwarded to the International Union.

[fol. 117] "However, nothing contained in Release # 1 nor in the Union's Constitution, stated in terms or inferred, that such a member whose good standing was not interrupted should be deprived of his legal and Constitutional right, otherwise available, to vote when he approached the polling place on election day. Nor was this, in fact, the intent of the General Executive Board in issuing Release # 1, nor of the drafters of the Uniform Local Union Constitution.

"Indeed, to the contrary, the Board had consistently maintained the position throughout the years, that its Constitution must be interpreted as a *living document* in the light of the Union's history and tradition—giving due regard to its unique and real needs—not from a formalistic standpoint. It was never the intention of the Union in adopting its Constitution, or of the General Executive Board in issuing Release

1 or in otherwise interpreting its Constitution to *deprive members* of their right to vote. The Board had always interpreted its Constitution liberally to preserve the right of members to vote. Particularly, in dealing with problems in the election area, the Board had always placed substantial requirements over form. The Board will continue to adhere to this view.

"The Board was troubled by the misinterpretation of the Constitution and Release # 1, which threatens to deprive wholesale numbers of members of their right to vote under the Union's Constitution and the Act. First, it felt that such an interpretation was unduly infringing upon the prerogative of the Board to interpret its Constitution in a fair and responsible manner in the interest of the membership, and was seeking to substitute the judgment of persons outside the Union on the meaning of the Union's Constitution for that of the Union's governing body, which had been elected by the membership and charged with that responsibility.

"But, in the Board's view, the principal vice of this hypertechnical interpretation was that it completely ignored the unique, real problems confronting the Union and its membership.

"The Board in interpreting its Constitution, is charged with the responsibility of giving due regard to the unique problems confronting the membership.

[fol. 118] "In issuing Release # 1, it was attempting to instruct its Locals on solid financial practices to promote their long run interests. The Board adheres to that view and is in no way attempting to relieve Secretary-Treasurers from their obligations. The Board knew then and it knows now that if its Constitution was construed to disenfranchise such members, a very substantial percentage of the total membership would be deprived of their right to vote. It knew then and it knows now that if such a harsh interpretation was placed upon the Union's Constitu-

tion, it would result in depriving many tens of thousands of their members and their families of death benefits built up over the years and of pension rights under collective bargained pension plans throughout this country. Moreover, it knows that if the Union were to adopt the interpretation urged, it could only suspend those members which would simply mean that they would lose their benefits, accruing over the years and be required to pay a new initiation fee under the Union's Constitution as a new member. The Board flatly rejected the opportunity for the International Union collecting such a financial windfall and it instructed the Executive Officers to advise each affiliate of the following action and take whatever possible actions are necessary to defend the right of the membership to act in that regard.

"After due consideration, the Board

"'VOTED: In accordance with the power and authority vested in it by the International Union Constitution, Uniform Local Union Constitution, and Uniform District Council Constitution, that its Constitutional provisions shall not be interpreted to deprive members of their legal and constitutional right to vote in those instances where local unions have accepted dues late and remitted per capita tax within the Constitutional period to this International Union, so that the local unions were never notified by the International Union that such members were suspended. To the extent that anything contained in Release # 1 of 1963 can be construed to reach a contrary conclusion or to cast doubt upon this position, it is hereby modified to that extent nunc pro tunc.'

"All affiliates and members please take note and abide yourselves accordingly.

Respectfully and fraternally yours,

/s/ JOS. V. MORESCHI

/s/ PETER FOSCO"

[fol. 119] Presented to the Court, along with the above-quoted directive, was an affidavit of Robert J. Connerton, General Counsel of the International. In his affidavit Mr. Connerton states that the directive of January 17 is "a formal constitutional interpretation by the General Executive Board binding on all Local Unions and officers."

While the directive of January 17 may reflect an official action taken by the General Executive Board, the directions contained therein are ambiguous, inconsistent with the clear and unambiguous language of the Uniform Local Union Constitution, and, further, are in many respects inconsistent with the instructions given in the directive of February 7, 1963. As has previously been noted, the defendant clearly acted in violation of its constitution in allowing certain delinquent persons to vote in the July 13 election. The Court finds that the directive of January 17 does not, and cannot, exculpate the defendant from the consequences of its previously improper conduct.[7]

Defendant urges that, even if it is found that the defendant violated its constitution in the conduct of the July 13 election, plaintiff's motion for summary judgment must nonetheless be overruled for the reason that there is an unresolved question of fact as to whether the improper conduct "may have affected the outcome of the election" [fol. 120] within the meaning of Section 402(e) (2) of the Act. Defendant states that even if certain ineligible voters voted in the July 13 election it is not clear which candidate they voted for. Defendant's position seems to be that where ineligible votes have been cast it must be shown not only that it is mathematically possible that the outcome of the election was affected, but, also, that the manner in which the ineligible voters voted actually did affect the outcome of the election. Defendant evidently has failed to recognize, however, that Section 401(d) of

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[7] The Court is in no manner indicating what steps the International or the Local can now reasonably take to resolve any problems which might result from such previous misconduct. Further, the Court should point out that this opinion is limited strictly to a determination of whether certain persons had a *right to vote* in the July 13 election.

the Act required that the election in question be held by secret ballot. To require or allow inquiry into the manner in which certain persons have voted would be entirely inconsistent with the Act's requirement that the ballot be secret. The Court, therefore, finds that the Act's secret ballot requirement forecloses any inquiry into how particular persons voted. The Court further finds that if the number of ineligible votes cast is sufficient to make it mathematically possible that the outcome of the election was affected, this fact alone conclusively establishes the Act's requirement that the conduct complained of may have affected the outcome of the election.

As has previously been noted, the July 13 election was decided by 19 votes. In said election, 58 ineligible votes were cast. In light of what has been stated above, it is clear that the casting of these votes may have affected the outcome of the election.[8]

[fol. 121] The Court finds that, with regard to the portion of the complaint here under consideration, there remains no genuine issue as to any material fact. The Court further finds that the defendant, in the conduct of the July 13 election, violated Section 401(e) of the Act, and that such violation may have affected the outcome of said election. Plaintiff's motion for summary judgment will, therefore, be granted.

ELIGIBILITY OF CANDIDATES

Defendant's constitution requires candidates for office to have maintained continuous good standing in the International for a period of two years and continuous good standing in the Local for a period of one year (Article V, § 1). Prior to the June 8 election, the defendant's Election Committee considered the matter of the eligibility of candidates. In determining eligibility, the Committee re-

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[8] As has previously been noted, the 58 voters involved either (1) had not paid their May, 1963 dues as of July 13, 1963, or (2) had not paid or completed payment of mandatory readmission fees. The number of persons within either category would, standing alone, have been sufficient to have affected the outcome of the election.

ferred to the Secretary-Treasurer's per-capita tax reports and the membership book of each potential candidate. (Admission 12) As has previously been noted, the per-capita tax reports did not give an accurate indication of whether individual members were in good standing at the date of the nominations or election, and, further, did not accurately indicate whether members had been in good standing in the defendant union for the year preceding the election or in the International for two years preceding the election. (Admission 11). The Election Committee did not examine the individual members' ledger cards, which cards would have accurately reflected the members dues payments.

[fol. 122] Within one year prior to the nominations and election, Andrew Jackson, the winner of the July 13 election, had been in arrears in his dues payments for more than two months. (Admission 18.) As has previously been noted, once a member falls in arrears he automatically loses his good standing. To regain good standing he must, under Article VIII of defendant's constitution, remit to the union the established readmission fee.

Under the circumstances set out above, it is clear that Mr. Jackson had not been in continuous good standing in the International for two years and, further, had not been in continuous good standing in the Local for at least one year. A similar situation prevailed with regard to Mr. Ferry. (Admission 16.) It is clear, however, that Mr. Dial had been in continuous good standing in the International for two years and, further, had been in continuous good standing in the Local for at least one year.

In protesting the conduct of the July 13 election, Mr. Dial made no claim relative to the eligibility of candidates. It would appear, therefore, that there is a substantial question as to whether, under the reasoning of Judge Connell's opinion, the Secretary is precluded from attacking the election of July 13 on this basis. Since, however, the Court has already found that the July 13 election must be set aside on the basis of the ineligibility of certain voters, neither this question nor the question of whether the election should be set aside on the basis of the ineligibility of candidates (assuming that the Secretary

is not precluded from attacking the election on this basis) need be resolved.

[fol. 123] An order will be entered in accordance with this memorandum opinion. Since the July 13, 1963, election concerned a single office, and, further, since the defendant will obviously be holding a general election within several months, it is clear that many practical problems are presented with regard to the provisions to be contained in said order. The Court, therefore, requests that counsel meet within ten days and attempt to agree upon a final order which takes into account the practical problems involved. If the parties are able to agree upon an order, said order should be submitted to the Court on or before April 15, 1966. If the parties are unable to agree upon an order, the parties should inform the Court to this effect on or before the same date.

/s/ Frank J. Battisti
United States District Judge

[fol. 124]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C 64-99

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

-vs-

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, AFL-CIO, DEFENDANT

ORDER—Filed April 18, 1966

Upon consideration, after argument by opposing counsel,

IT IS ORDERED that plaintiff's motion for summary judgment, with regard to that portion of his complaint directed to the run-off election of July 13, 1963 for the office of Business Representative, is hereby granted.

IT IS FURTHER ORDERED that the run-off election conducted by the defendant on July 13, 1963 for the office of Business Representative is hereby declared to be null and void and set aside; that the next regularly scheduled election for the office of Business Representative will be held under the supervision of the plaintiff, as provided for in Section 402(c) of the Act (29 U.S.C. 482(c)) and in accordance with the Act and defendant's uniform local constitution as long as they are not inconsistent with the [fol. 125] provisions of the Act; that after such election has been held, the ballots canvassed and results announced, the successful candidate will be installed in office as defendant's Business Representative for a full constitutional term of office; that this action will hold on the docket of this Court pending completion of the nomination, election

and installation of the officer elected as hereby ordered; and that after completion of the nomination and election of said officer, if plaintiff certifies to the Court that said election was conducted in accordance with the provisions of the Act and defendant's constitution so long as they are not inconsistent with the provisions of the Act, the Court may thereupon, upon approval of such certification, enter a judgment declaring that such person has been elected to said office.

/s/ Frank J. Battisti
United States District Judge

APPROVED:

/s/ R. J. Rotatori
Attorney for Plaintiff

/s/ Mortimer Riemer
Attorney for Defendant

[fol. 126]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17,344

[File Endorsement Omitted]

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor, PLAINTIFF-APPELLANT

-vs-

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, DEFENDANT-APPELLEE

ORDER VACATING JUDGMENT AND REMANDING WITH INSTRUCTIONS—Filed December 15, 1966

The Secretary of Labor brought this suit under Section 402 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 482, to challenge the validity of a union general election held in June, 1963, and a runoff election held the following month. The district court, in an opinion reported at 231 F. Supp. 590, dismissed the Secretary's complaint insofar as it dealt with the general election on the ground that internal union procedures had not been exhausted in an effort to correct the alleged irregularities in that election, and the Secretary here contests the propriety of that dismissal.

Subsequent to the decision of the trial judge, a general election was held by the union in June, 1966. The present union officers hold their positions pursuant to this 1966 election and not the election challenged by the Secretary. Appellee contends, and the court agrees, that this fact renders moot the question on appeal, since the statutory remedies for election irregularities can serve no purpose here in light of the subsequent election which has been held. To prevent the district court decision herein held to be unappealable from serving as a precedent, the court will not dismiss the appeal as requested by appellee, but

will vacate the judgment of the district court dismissing a portion of the Secretary's suit and will remand with [fol. 127] instructions to dismiss the complaint as moot insofar as it relates to the 1963 general election. See *United States* v. *Munsingwear*, 340 U. S. 36 (1950).

The court deems it appropriate to cite here the following observation of the Second Circuit in the cases of *Wirtz* v. *Local Unions 410, 410 A, 410 B & 410 C, International Union of Operating Engineers* and *Wirtz* v. *Local 30, International Union of Operating Engineers*, decided August 1, 1966:

> As these cases illustrate, it is the delays incident to civil cases in the district courts which create the substantial likelihood that subsequent union elections will moot Title IV cases prior to appellate review. To prevent recurrence of such delays, we think the district courts should expedite the trial of Title IV cases to the greatest extent possible.

It is ORDERED that the judgment of the district court dismissing the portion of the Secretary's complaint dealing with the 1963 general election is vacated, and the case is remanded with instructions that said portion of the complaint be dismissed as moot.

Entered by Order of the Court

/s/ Carl W. Reuss
Clerk

[fol. 128]

SUPREME COURT OF THE UNITED STATES

No. 1117, October Term, 1966

W. WILLARD WIRTZ, Secretary of Labor, PETITIONER

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

ORDER ALLOWING CERTIORARI—May 15, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 1115.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 270002 47

Office-Supreme Court, U.
FILED
MAR 3 1967
JOHN F. DAVIS, CLERK

No. 58

In the Supreme Court of the United States

OCTOBER TERM, 1966

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

THURGOOD MARSHALL,
Solicitor General,
BAREFOOT SANDERS,
Assistant Attorney General,
NATHAN LEWIN,
Assistant to the Solicitor General,
ALAN S. ROSENTHAL,
ROBERT V. ZENER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

CHARLES DONAHUE,
Solicitor,
EDWARD D. FRIEDMAN,
Deputy Solicitor,
JAMES R. BEAIRD,
Associate Solicitor,
Department of Labor,
Washington, D.C. 20210.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No.

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the Secretary of Labor, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The order of the court of appeals (Appendix A, pp. 9–10, *infra*) is unreported. The opinion of the district court striking portions of the complaint (Appendix B, pp. 11–22, *infra*) is reported at 231 F. Supp. 590. The opinion of the district court on the Secretary's motion for summary judgment (Appendix C, pp. 23–42, *infra*) is unreported.

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JURISDICTION

The judgment of the court of appeals was entered on December 15, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether an action by the Secretary of Labor challenging a union election under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 is rendered moot if a subsequent election is held by the defendant union.

2. Whether the Secretary's power to institute an action to invalidate a union election is limited to the particular allegation made by a complaining union member and to the particular contest challenged by the complainant.

STATUTE INVOLVED

The relevant provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*, are set forth in Appendix F to our petition for a writ of certiorari in *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* filed today.

STATEMENT

Respondent union held a general election of officers on June 8, 1963, and that election resulted in a tie vote for the office of Business Representative. A run-off election for the post was held on July 13, 1963. Within one month after the run-off election, the losing candidate protested the conduct of the election to the union, and his protest was denied on December 2, 1963. On December 9, 1963, the candidate filed a complaint with the Secretary of Labor alleging that the run-off

election for Business Representative had been conducted in violation of the union's constitution and by-laws (pp. 11–12, *infra*).

After conducting an investigation, the Secretary instituted this action on February 7, 1964, seeking an order declaring the 1963 general and run-off elections invalid. The complaint alleged that under the union's constitution only members who had paid the *per capita* tax to the international union—which was forwarded through the offices of the local—were eligible to vote and run for office, but that the union's secretary-treasurer had followed the practice of forwarding to the international union the *per capita* tax of certain select members who had fallen behind on their local dues. In this manner, it was alleged, the local's treasury was being used to assure the eligibility of between 50 and 75 union members, while aproximately 500 others who had been delinquent in paying their local dues were declared ineligible.

On the union's motion, the district court on July 13, 1964, struck those portions of the complaint that were directed to the election of officers other than Business Representative on the ground that no complaint by any union member had challenged the general election of June 1963 (pp. 11–22, *infra*). Thereafter, in April 1966, the district court granted the Secretary's motion for summary judgment and directed a supervised election for the office of business representative (pp. 23–42, *infra*). The Secretary appealed from the order limiting relief to the office of Business Representative.

On June 11, 1966, the union held its next regular election and, at the same time, a supervised election

for the office of Business Representative was conducted. The court of appeals thereupon dismissed the Secretary's appeal as moot, relying on the similar decision of the Court of Appeals for the Second Circuit in *Wirtz* v. *Local Unions 410, 410A, 410B & 410C International Union of Operating Engineers,* 366 F. 2d 438 (pp. 9–10, *infra*).

REASONS FOR GRANTING THE WRIT

1. The first question presented in this case is similar to the question presented in *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* in which we are today filing a petition for a writ of certiorari. The facts here are distinguishable from those in the *Glass Bottle Blowers* case, however, in that the intervening election—which, in the view of the court below, rendered the case moot—may not have been tainted by the same violation as the Secretary alleged to have occurred in the 1963 election. In this case, unlike the *Glass Bottle Blowers* case, there is no evidence in the record as to whether the violation continued to 1966 and whether it affected the unsupervised portion of the 1966 election.[1] For the reasons stated in our peti-

[1] The Department of Labor advises us that its representatives who supervised the election for Business Representative were not in a position to determine whether ineligible members either ran for office or voted at the election for the other offices. Although the supervised and unsupervised elections took place at the same time and in the same hall, separate ballots and separate ballot boxes were used, and there were two separate lines of voters. Thus, so far as the Department knows, persons ruled ineligible to vote at the supervised election could have voted at the unsupervised election, and persons ineligible to run at the supervised election could have run at the unsupervised election.

tion in the *Glass Bottle Blowers* case, we believe that the court below erred in concluding that the action was moot and that its error does substantial harm to the remedial scheme established by Congress. It makes no difference, we believe, whether the intervening regular union election is itself subject to challenge or not. The statute contemplates that if the Secretary can prove the invalidity of the initial contested election, he may demand a supervised election as the only realistic means of overcoming the harm previously done.

2. The second question presented in this case is similar to the question presented in *Wirtz* v. *Local Unions Nos. 9, 9–A, and 9–B, International Union of Operating Engineers*, in which we are also today filing a petition for a writ of certiorari. It is unlike the *Operating Engineers* case, however, in that the unchallenged races which the Secretary sought to invalidate here were conducted at a different time from the race specified in the member's complaint. That did not, we believe, make it a separate "election" for purposes of the statute because, in substance, both votes were part of one process designed to select union officers for the following three years.

For the reasons stated in our petition in the *Operating Engineers* case, we believe that the district court improperly narrowed the Secretary's remedial powers by confining his authority to sue to the race challenged by the union member. The Secretary's investigation of the union's 1963 election disclosed that 16 of the 27 candidates in that election (including four who were elected) would have been ineligi-

ble if the requirements of the union's constitution and bylaws had been uniformly applied, and that 49 of the 311 voters would have been disqualified from voting. (Three contests were decided by less than 49 votes.) It is not consistent with the purpose of the Act, we submit, for these violations to be immune from challenge by the Secretary even though the union has rejected a member's protest alleging related violations and has thereby refused to set its own house in order.

3. The decision below, like those in the related cases in which we are simultaneously filing petitions for writ of certiorari, narrowly construe the powers assigned to the Secretary of Labor by Title IV of the Labor-Management Reporting and Disclosure Act. Such a grudging approach is, we believe, contrary to the plain intent of Congress, which, as this Court observed in *Calhoon* v. *Harvey*, 379 U.S. 134, 140, "decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest." We urge this Court to grant our petitions for certiorari in these three cases to consider, in varying factual contexts, the scope of the Secretary's power to enforce the rights guaranteed by the Act.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General,
BAREFOOT SANDERS,
Assistant Attorney General,
NATHAN LEWIN,
Assistant to the Solicitor General.
ALAN S. ROSENTHAL,
ROBERT V. ZENER,
Attorneys.

CHARLES DONAHUE,
Solicitor,
EDWARD D. FRIEDMAN,
Deputy Solicitor,
JAMES R. BEAIRD,
Associate Solicitor,
Department of Labor.

MARCH 1967.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 17,344

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF-APPELLANT

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO, DEFENDENT-APPELLEE

ORDER VACATING JUDGEMENT AND REMANDING WITH INSTRUCTIONS

The Secretary of Labor brought this suit under Section 402 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 482, to challenge the validity of a union general election held in June, 1963, and a runoff election held the following month. The district court, in an opinion reported at 231 F. Supp. 590, dismissed the Secretary's complaint insofar as it dealt with the general election on the ground that internal union procedures had not been exhausted in an effort to correct the alleged irregularities in that election, and the Secretary here contests the propriety of that dismissal.

Subsequent to the decision of the trial judge, a general election was held by the union in June, 1966. The present union officers hold their positions pursuant to this 1966 election and not the election chal-

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lenged by the Secretary. Appellee contends, and the court agrees, that this fact renders moot the question on appeal, since the statutory remedies for election irregularities can serve no purpose here in light of the subsequent election which has been held. To prevent the district court decision herein held to be unappealable from serving as a precedent, the court will not dismiss the appeal as requested by appellee, but will vacate the judgment of the district court dismissing a portion of the Secretary's suit and will remand with instructions to dismiss the complaint as moot insofar as it relates to the 1963 general election. See *United States* v. *Munsingwear*, 340 U.S. 36 (1950).

The court deems it appropriate to cite here the following observation of the Second Circuit in the cases of *Wirtz v. Local Unions 410, 410 A, 410 B & 410 C, International Union of Operating Engineers* and *Wirtz* v. *Local 30, International Union of Operating Engineers*, decided August 1, 1966:

> As these cases illustrate, it is the delays incident to civil cases in the district courts which create the substantial likelihood that subsequent union elections will moot title IV cases prior to appellate review. To prevent recurrence of such delays, we think the district courts should expedite the trial of title IV cases to the greatest extent possible.

It is ORDERED that the judgment of the district court dismissing the portion of the Secretary's complaint dealing with the 1963 general election is vacated, and the case is remanded with instructions that said portion of the complaint be dismissed as moot.

ENTERED BY ORDER OF THE COURT
CARL W. REUSS, *Clerk*.

APPENDIX B

United States District Court Northern District of Ohio, Eastern Division

Civil Action No. C 64–99

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABORERS' UNION OF AMERICA, DEFENDANT

DEFENDANT'S MOTION TO DISMISS PART OF THE COMPLAINT

CONNELL, Chief Judge

On February 7, 1964, the Secretary of Labor brought complaint against the defendant union under the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 *et seq.*, 29 U.S.C.A. § 401–530, hereinafter referred to as LMRDA. The plaintiff seeks to void the election of officers in 1963, compel a new election under the aegis of the federal government, and to restrain those presently holding office from disposing of the assets of the union.

From the complaint, the allegations of which we must accept as true for the purposes of this motion, we recognize these uncomplicated facts which have brought this case here. On June 8, 1963, the union held an election; all offices were filled except that of Business Representative, where the vote ended in a tie. Consequently, a runoff election was held on July 13,

1963 for that office alone. After this election, a member in good standing (as yet unnamed) lodged a protest with the union against the conduct of that election. Having received a denial of his protest, he filed a timely complaint with the Secretary of Labor, alleging violations of 29 U.S.C.A. § 401. After investigation and consideration, the Secretary instituted this action which complains not only of irregularities in the conduct of that run-off election, but also attacks the first election.

The defendant now moves to dismiss that portion of the complaint which is directed to the election of June 8, 1963, on the ground that the statute (29 U.S.C.A. § 482(a)[1] permits suit by the Secretary only at the instance of a complaining member who has exhausted his internal avenues of protest. There is no allegation that a member complained internally about the conduct of that June 8 election. The plaintiff resists the motion on three grounds: (1) that the run-off election was such an integral part of the whole

[1] § 482. Enforcement—Filing of complaint; presumption of validity of challenged election

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or.

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

election that complaint against it reaches to the entire election; (2) the legitimate inquiry by the Secretary addressed to the election of July 13, 1963, uncovered irregularities which must be corrected in the interest of the public; (3) The exhaustion of remedies is not an absolute requirement, so the Court in its discretion is empowered to disregard the absence of internal attack upon the election of June 8.

We cannot agree with the Secretary that exhaustion of the member's right of protest within the union against the run-off election operates to bring the whole election under the scrutiny of the Secretary and the jurisdiction of this Court. The plaintiff argues strongly that the two polls are but two elements of a single transaction, so that attack by the member upon the balloting on July 13 is really an attack upon the entire election. To support this contention, the plaintiff directs the Court's attention to Webster's New Collegiate Dictionary 761 (1961), which defines "run-off" as a final race, contest, or the like, to decide an earlier one that has ended without a decision in favor of any one competitor." Though this definition, and common sense, establish a strong logical relationship between these two polls, it must be remembered that the complaint is directed against the procedural *conduct* of the election. We cannot assume that on both occasions the identical procedure was utilized by the union. We cannot assume that the irregularity to which the member addressed his complaint about the run-off was present in the initial balloting. Nor can we assume that the member intended to complain about the whole election when he only notified the union that he was dissatisfied with the conduct of the run-off election. Thus the first ground advanced by the Secretary is untenable.

The second and third contentions proffered by the plaintiff are designed to elicit from the Court a favor-

able construction of § 482(a) in light of the permissive language contained in § 411(a)(4) of the statute. Section 411(a)(4) states that a member "may" be required to exhaust internal remedies before seeking enforcement of his rights in an administrative or legal proceeding. It is not wholly insignificant that earlier drafts of this "Bill of Rights" contained in the word "shall" instead of "may". Cf. Legislative History of Labor-Management Reporting and Disclosure Act, P. 698, H.R. 8342, as reported.[2] In other words, the Secretary would have us read the permissive spirit of § 411, which is the heart of the Act into § 482, upon which this action is predicated.

As is often the case when a court is confronted with a new statute, our attention is directed to the situation which provoked the LMRDA and the deliberations of the legislative body which enacted the bill. This Act was the result of agitation for legal control over union leadership in order to preserve democracy within unions and to guarantee every union member the right to make his voice heard in the formulation of union policy. One of the most articulate pleas for such legislation was that of then Professor Archibald Cox. In his article "The Role of Law in Preserving Union Democracy", 72 HARVARD LAW REVIEW 609, he specifically rejected one form of proposed legislation, then pending, which gave the government wide powers to regulate the internal affairs of unions:

> The fundamental objection is that it would have turned over to an arm of the federal government the responsibility of carrying on the internal governmental processes of a labor union without any showing that the union officers and members were incompetent and corrupt. Such a measure does not promote

[2] The next version of the bill, H.R. 8400, substituted "may" for "shall". There is no explanation, however, for the change.

> freedom or democracy. It reduces self-government. It denies the private responsibility and self-determination which lie at the heart of a voluntary association. 72 *Harv. L. Rev.* 609, 630.

Commenting upon the problem which the instant case presents, Professor Cox stated:

> Any member who can show that he has pursued in timely fashion the remedies available to him, within the union and any parent body, should be allowed to file a complaint with the Secretary of Labor alleging that a union election violated the statute. Requiring the exhaustion of internal remedies would preserve a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections . . . *Ibid.*, at 633.

Thus the commentator who urged most strongly the passage of the LMRDA viewed the exhaustion of internal remedies as an integral part of that bill.[3]

Investigation of the deliberations of Congress further illuminates the viability of the exhaustion doctrine. At no point did the legislators indicate a willingness to abrogate this traditional requirement in favor of summary action by the federal government; on the contrary, we are confronted at every turn with positive, unequivocal expressions of faith in the ability of unions to regulate their own affairs.

> In filing a complaint the member *must* show that he has pursued any remedies available to him within the union and any parent body in a

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[3] For a contrary view concerning internal remedies, see Montemuro, "The Doctrine of Exhaustion of Union Remedies", 2 Duke B. J. 148 (1952). The author's principal objection, however, is directed against dilatory tactics by the union after it has disciplined a member; that is not our problem.

> timely manner. This rule preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections. *If* the member is denied relief by the union or can obtain no decision from the union any way or another within three months, he may complain to the Secretary. S. Rep. No. 187 on S.B. 1555, p. 21; Legislative History of LMRDA, vol. I, p. 417 (emphasis added).

At least the Committee which drew up the report on the bill seemed to think that exhaustion was a condition precedent to action by the Secretary.

At another point in the report, the Committee again expressed its reticence to shackle labor relations with further encumbering interference by the government.

> The provisions of the bill are not to be interpreted as taking the place of, or excusing non-compliance with established standards of proper conduct or any voluntarily adopted labor or management ethical practices code. Nor are they to be interpreted as precluding further voluntary action . . . The committee is convinced that rigid Government controls should be avoided if it is all possible to do so. It is also convinced that labor and management have considerable ability to regulate their own affairs through their own voluntary action. S. Rep., supra, p. 23; Legislative History, supra, p. 419.

Thus we are forced to agree with the statement of Judge Wilson in *McGraw* v. *United Association of Journeymen and Pipefitting Industry,* 216 F. Supp. 655, 660 (E.D. Tenn., S.D. 1963), that the exhaustion of remedies requirement is based upon a Congressionally approved policy of affording unions the opportunity of correcting their own errors and encour-

aging union responsibility, initiative and self-discipline. In other words, a complaining member must first seek redress from his peers before inviting the Government to champion his cause.[4]

With this background, we address the other two objections of the plaintiff. The second objection, i.e., that the public interest demands correction of abuses uncovered in the June 8 election, is closely related to the first contention. The secretary seems to say that once he has the right to investigate and correct by suit any aspect of any union election, this grants him *carte blanche* authority to reach all aspects of a union's election procedures. But in this, he fails to distinguish between his right to investigate under the Act and his standing to sue under the Act.

The Secretary is granted broad *investigatory* powers, under 29 U.S.C.A. § 521;[5] to delve into union

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[4] The court has searched unsuccessfully for any authoritative source in which the exhaustion doctrine has been disparaged or in which it is suggested that courts may disregard it. Cf. Symposium on the Labor-Management Reporting and Disclosure Act 138, 259, 284, 333–336, 505.

[5] 521. Investigations by Secretary; applicability of other laws

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this chapter, the provisions of sections 49 and 50 of Title 15

election procedure; there is no requirement that the investigation be preceded by a request from a dissatisfied member. In advancing his second objection to the defendant's motion to dismiss, the plaintiff would have us read the permissive scope of inquiry in § 521 into 482 because the public policy which prompted the inclusion of § 521 in the Act would best be served in this manner. He seeks, in effect, legislation by judicial edict.

To support this contention the plaintiff cites *Wirtz* v. *Local 191, International Brotherhood of Teamsters, etc.*, 218 F. Supp. 885 (D.C. Conn. 1963), where the Secretary moved to enforce a subpoena duces tecum which had been served on a union pursuant to an investigation under § 521. The union resisted the subpoena on the ground that, since action by the Secretary to secure judicial remedy against an election is conditioned upon complaint by a member who has exhausted internal remedies, and no such showing had been made, the Government should be denied access to union records which might have importance in a subsequent suit. As the Court phrased the question:

> . . . must it be shown that the conditions precedent to the filing of a complaint by the Secretary have been fulfilled in order to permit an investigation by the Secretary and his use of the subpoena power to implement that investigation? 218 F. Supp. 885, 886.

In overruling the union's objection, the Court recognized the basic differences between the two provisions: § 482 permits *challenge* of an election by re-

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(relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers and duties of the Secretary or any officers designated by him.

sort to court, while § 521 permits *investigation* of an election. The right to investigate is unfettered by the restrictions surrounding the right to sue.[6]

On appeal the Second Circuit Court clearly analyzed the two sections in affirming the decision of the lower court. In dismissing the attempt by the union to read the restrictions of § 42 into § 521, the Court had no difficulty in reconciling the two sections because they are directed to two different objectives.

> No conflict is created by reading Section 402 and Section 601 together. Section 402 provides for the Secretary's instituting an action in the courts in behalf of an individual who has complained of a violation of Title IV. Section 601 provides that the Secretary shall "determine the facts relative" to a violation or threatened violation and that he may report the results of his investigation "to interested persons or officials." It may be that some or all of the limitations of Section 402, such as the exhaustion of internal remedies, are relevant to the suit which that section authorizes; there is in Section 601 no similar limitation on the

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[6] The plaintiff relies upon this statement by the Court to support his argument that the interest of the public requires us to ignore the plain wording of the statute:

> But there is far more at stake in protecting democratic election procedures for all members . . . There is nothing ambiguous about the legislative policy in the Labor-Management Reporting and Disclosure Act to advance union democracy . . . Likewise it is clear from legislative history that Congress recognized that since the public interest in safeguarding and improving the electoral process exceeds even that of members, it might be unwise to place too much reliance on its members to vindicate that interest.

Not only is this statement totally unsupported by any reference to the legislative history upon which it purports to be founded, but it is pure dictum and of no avail to the plaintiff in this case.

> Secretary's power to investigate and report. Presumably the Secretary can bring an action only when a complaint has been filed by an individual member (Section 402). But he can investigate and report without such a complaint. The two sections of the statute can thus be read together and each be given full effect in complete harmony and without any trace of clashing purposes. 321 F. 2d 445, 448.

This case, rather than support the plaintiff's position on this issue, proves fatal to his argument; in that case, we find a union espousing a position which is the counterpart of the Secretary's position in the instant case. Just as the Connecticut District Court and the Second Circuit Court refused to grant the union's request to read restrictions into § 521, we refuse to read those same restrictions out of § 482.

In his solicitous pursuit of the public interest, the Secretary cites *Goldberg* v. *Amalgamated Local Union* 355, 202 F. Supp. 844 (E.D. N.Y. 1962) to further the argument that the public interest permits him to allege violations of the Act not contained in the member's internal protest. But that Court explicitly stated that

> [o]nly after the member of the labor organization has exhausted the remedies available to him under the Constitution and by-laws of the labor organization . . . does the right of the Secretary accrue. 202 F. Supp. 844, 846.

Plaintiff here invokes the doctrine of "public interest." Can we place this "public interest" of which the government is here so solicitous above the interest of the individual members of the union? Unions are voluntary associations, organized by workers to promote their common welfare. The sole reason for their existence is to advance the cause of the individual laborer by negotiating from a position of collec-

tive strength to secure favorable wages and working conditions. The individual members entrust this strength to the officers of the union, just as the members of this defendant union did by the election of June 8, 1963. It is highly significant that not one voice of protest has been heard from the membership against the conduct of that election. We do not think that the Secretary under the guise of "public interest" may be permitted to complain when the membership has not; to hold otherwise would, in fact, be inimical to true public interest because it would require legislation by judicial fiat. If the members are satisfied, then the government ought to be satisfied.

The third contention advanced by the plaintiff suggests that the Court may, in its discretion, ignore the requirement of internal exhaustion. We disagree. The cases where this has been done involved situations where the internal complaint was to be heard by those very people against whom complaint was to be made. Cf., eg., *Calagaz* v. *Calhoun,* 309 F. 2d 248 (5th Cir. 1962). This is but a further expression of a basic tenet of American jurisprudence—the law will not require a useless act. It is significant that the cited case and other like it do not involve actions brought by the Secretary under § 482. The Court finds, therefore, that it is without discretion to erase the explicit condition which Congress wrote into the statute.

In addition to these affirmative attacks upon the doctrine of exhaustion of remedies, the plaintiff suggests that the defendant should be estopped from asserting the failure of this condition precedent. Since the union had been directed to investigate a complaint about the July 13 run-off, it is argued, it should then have investigated the election of June 8. We disagree, for the simple reason that no one asked for such an investigation. The purpose of retaining the

exhaustion requirement in the LMRDA is to afford the union the first opportunity to police its own behavior; if no complaint is heard, however, no investigation is launched. The statute (29 U.S.C.A. § 472(a)(2)) permits courts, when suit is brought, to presume that an election is valid until the contrary be proven. Thus the burden of proof and the risk of persuasion must be borne by the party which attacks an election. By analogy the union itself should be entitled to make that same presumption; the union can presume that its procedure is correct and need not investigate unless and until a member complains. Thus we hold that the union was not required to investigate the election of June 8, and the union is not estopped from asserting the failure of a condition precedent to the Secretary's complaint against that election.

APPENDIX C

United States District Court, Northern District of Ohio, Eastern Division

Civil Action No. C 64–99

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

LOCAL UNION NO. 125, INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOBERS' UNION OF AMERICA, DEFENDANT

MEMORANDUM OPINION

BATTISTI, J.

On June 8, 1963, defendant held a general election of officers. In this election the vote for the office of Business Representative resulted in a tie between two of the three candidates, those two being Cecil Dial and Andrew E. Jackson. On July 13, 1963, defendant held a run-off election for the office of Business Representative. In the run-off election Andrew E. Jackson received 198 votes, Cecil Dial received 179 votes, and Irwin Ferry received 2 votes.[1] Subsequent to the July 13 election, Andrew Jackson was sworn in as Business Representative of the defendant.

On August 11, 1963, Cecil Dial, acting pursuant to defendant's constitution, protested the conduct of the run-off election to the General Executive Board of the International Hod Carriers' Building and Common Laborers' Union of America. This protest

[1] Mr. Ferry was the third candidate in the June 8 election.

was denied by the General Executive Board on December 2, 1963. On December 9, 1963, Dial filed a complaint with the Secretary of Labor. Upon receipt of Dial's complaint the Secretary investigated both the June 8, 1963, general election and the July 13, 1963, run-off election.

On February 7, 1964, the Secretary filed the present action under the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A §§ 401–530 (hereinafter referred to as the Act) seeking an order setting aside the June 8, 1963, general election and also the July 13, 1963, run-off election. In his complaint the Secretary alleged *inter alia* that the defendant had violated Section 401 of the Act (29 U.S.C.A. § 481) in that it had failed to conduct the two elections in accordance with its constitution and bylaws. The Secretary further alleged that these violations may have affected the outcome of the two elections.

In a memorandum opinion dated July 13, 1964, Chief Judge Connell granted the defendant's motion to dismiss that portion of the complaint directed to the general election of June 8, 1963. *Wirtz* v. *Local No. 125, International Hod Carriers' Building and Common Laborers' Union of America,* 231 F. Supp. 590 (1964). In dismissing that portion of the complaint, Judge Connell found that since no member of the defendant had complained internally about the conduct of the June 8 election, the Secretary's allegations with regard to said election were not, as required by Section 402 of the Act (29 U.S.C.A. § 482),[2]

[2] Section 402 of the Act (29 U.S.C.A. § 482) provides in pertinent part as follows: (a) A member of a labor organization—(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary

predicated upon a complaint by a union member who had exhausted his internal remedies.

The Secretary has now moved for summary judgment with regard to that portion of his complaint directed to the run-off election of July 13. In the alternative, the Secretary moves that the action be advanced on the trial docket.

As has already been noted, the Secretary alleges that defendant, in violation of Section 401(e) of the Act (29 U.S.C.A. § 481(e)), failed to conduct the July 13 election in accordance with the applicable provisions of its constitution and bylaws. Specifically, the Secretary alleges that the defendant (1) permitted ineligible candidates to run for office, and (2) permitted persons to vote who were ineligible to do so.

Section 401(e) of the Act (29 U.S.C.A. § 481(e)) provides in pertinent part as follows:

> (e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of

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within one calendar month thereafter alleging the violation of any provision of Section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). * * * (b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization. * * *

> any kind by such organization or any member thereof. * * * Each member in good standing shall be entitled to one vote. * * * The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

It is clear, and the defendant does not urge otherwise, that the run-off election of July 13 comes within the purview of Section 401(e) of the Act. The alleged violations of Section 401(e) will be considered separately below.

ALLOWING INELIGIBLE PERSONS TO VOTE IN THE JULY 13 ELECTION [3]

Article VIII of Local 125's constitution provides in pertinent part as follows:

> Section 5. The monthly dues are due on the first day of the month and unless paid on or before the last day of the following month, the member *shall be considered to be in arrears and suspended without notice.* [Emphasis supplied.]
>
> * * * * *
>
> Section 7. The readmission fee for persons who are suspended for nonpayment of dues, assessments or fines to the Local Union and who remain suspended for a period of less than one year, shall be the amount of such assessments or fines in addition to the following: * * *[figures omitted] * * * Once the member has defaulted in the payment of dues, as herein provided, the date of suspension referred to in this

[3] It is clear that the portion of the Secretary's complaint directed to the matter of the eligibility of voters in the July 13 election is, as required by Section 402 of the Act (29 U.S.C.A. § 482), predicated upon a complaint by a member of the defendant who has exhausted his internal remedies.

> section, shall be the first day after the month for which the member's dues were last paid.
>
> Section 8. *Persons in arrears have no right to attend meetings nor any other rights except the right to be readmitted in accordance with the above section* [Section 7]. If a member becomes suspended by reason of his own conduct he can only be readmitted through the Local Union of which he was a member when suspended. Readmitted members shall be considered new members from the date of their readmission. [Emphasis supplied.]

It is on the basis of the above-quoted portions of Article VIII of the defendant's constitution that the Secretary predicates his claim that certain ineligible persons voted in the July 13 election. The Secretary urges that under the clear and unambiguous language of Article VIII a member who has not paid his dues within the time provided by Section 5 is automatically in arrears and should be suspended without notice. The Secretary further urges that once a member has fallen in arrears, he loses all rights except the right to be readmitted, in accordance with Section 8 of defendant's constitution and, therefore, is not entitled to vote in union elections unless and until he has paid the madatory readmission fee.

Article XVIII, § 3, of the International Constitution provides as follows:

> Section 3. Each Local Union shall, through its Secretary-Treasurer, pay to the International Union a per capita tax of $1.00 per member per month, payable for the current month on each member in the Local Union and an initiation fee of $5.00 for each member registered with the International Union as a member and $2.50 for each member readmitted; each initiation fee and each readmission fee must be accompanied with the per capita tax for the month in which the member is registered or readmitted.

It is clear from the defendant's answers to the plaintiff's interrogatories that defendant maintains "per capita tax sheets" reflecting payments made to the International pursuant to Article XVIII, § 3, of the International Constitution.

At the July 13 election, members listed as paid for the month of May 1963 on the Secretary-Treasurer's per capita tax sheets were deemed to be in good standing and, thus, eligible to vote. (Admission 19.) These per capita tax sheets did not, however, accurately reflect the names of those persons who were actually in good standing as of July 13. (Admission 11.) Said sheets were inaccurate because the Secretary-Treasurer of the defendant had paid the per capita tax for certain persons who were delinquent in the payment of their May 1963 dues and also for certain persons who had either not paid or had not completed payment of mandatory readmission fees. Thus, of the 379 persons voting in the July 13 election, 58 were delinquent in their payments to the union. (See responses to plaintiff's request for admissions Nos. 20 and 21.)[4]

Mr. Martin M. Mason, Secretary-Treasurer of the defendant, has, by way of affidavit, stated, as follows:

> The plaintiff also urges that many members for whom I paid their per capita tax were not eligible to vote. In the fall of 1962 and spring of 1963, there was a lot of unemployment in the Youngstown area. A lot of men who had been long-time members could not find work. They wanted to remain members and be eligible for any work that came along. They asked me for consideration as in the past to pay their per capita tax and keep their membership alive.

[4] As to 13 of the 58, the facts giving rise to an obligation to pay a readmission fee are not readily apparent. See Admissions 21 (d), (e), (k), (l), (u), (w), (z), (ak), (as), (ax), (ay), (az), (bg).

> This was not a practice I set up but was procedure that had been long established prior to my coming into office. I did this to help and assist these old time members. I explained this fully in my statement, plaintiff's exhibit "I". I think I should have an opportunity to explain this to the Court by testimony and not have this motion decided on these papers. (Defendant's exhibit 1.)

It might be noted that in plaintiff's exhibit I, the statement referred to in the above-quoted portion of Mr. Mason's affidavit, Mr. Mason stated in part as follows:

> I as Secretary-Treasurer of Local 125 have, on my own initiative, paid per capita tax to the International for members who have not paid dues to the Local. Many of these persons should have been automatically suspended. I am also aware that these persons, delinquent over 61 days, should have been required to pay reinstatement fees to Local 125. According to our constitution, these members I have carried by paying their per capita tax who have not paid a reinstatement fee are not members in good standing and they should not have been permitted to vote in Local 125's election. The reason I carried some of these members by paying per capita tax to the International was so that they would work. Unemployment has been in Youngstown, Ohio, and members don't have the money for dues. I paid their per capita out of the General Funds of the Local. However, many persons have been suspended by me for failure to pay dues. I only paid per capita for members I knew had been unemployed, had been long time members and I took into consideration personal hardships and family situations. I have kept no records of persons that I paid per capita for or who had not paid reinstatement fees.

Prior to the July 13 election it had been called to the attention of the International that the Secretary-Treasurers of certain locals were forwarding per-capita tax payments to the International for certain persons who were delinquent in payments to the local. On February 7, 1963, in a letter addressed to all affiliated local unions, district councils, and members, the General President and the Secretary-Treasurer of the International made the following comments with regard to this practice:

> The General Executive Board, at a recent meeting, was made aware of several complaints and protests regarding payments of constitutional fees, such as dues, initiation fees, readmission fees, et al.
>
> At the outset, it is to be observed that corresponding payments made by Local Unions to the General Secretary-Treasurer of the International Union, such as per capita tax, etc., are received and accepted on the presumption of propriety; namely, that the payments submitted are pursuant to and in accordance with the full intent of constitutional requirements. To illustrate: when the Secretary-Treasurer of a Local Union forwards per capita tax in behalf of a member, the presumption is that the Secretary-Treasurer has received payment of the dues for the particular month, directly from the member. It now appears that, in some instances, Secretaries-Treasurers of Local Unions forward per capita tax to the International Union for certain members who have not paid dues for the corresponding month.
>
> The information further discloses that, in some instances, there has been a practice of so-called "free dues". This has occurred and has been applied to various officers of Local Unions, stewards on jobs, sick members, and for individuals in other categories or capacities.
>
> It must be noted that such offer of per capita tax is definitely improper because it is not based

on a payment made directly by the member to the Local Union and, accordingly, any submission of per capita tax by the Secretary-Treasurer is therefore void, invalid and of no effect. You will also notice that, this being so, the member is not in good standing under the provisions of the Constitution.

In order that this entire area of mistaken and improper activity may be corrected, the General Executive Board, at its meeting held January 9–29, 1963, voted, that in all instances where and when the General Secretary-Treasurer, on and after April 1, 1963, finds that per capita tax and other fees submitted by Local Unions, are not based upon corresponding payments directly made by the member to the Local Union, such submission shall be deemed to be invalid, improper and of no effect.

It must be noted, as stated above, that where and when such finding occurs, the result is, that the members affected are not in good standing if the delinquency is for a period longer than that specified and provided for in the Constitution.

All affiliates and members please take note and abide yourselves accordingly. (Plaintiff's exhibit C)

* * * * *

It is manifestly clear that the Secretary-Treasurer of the defendant failed to comply with International Union's directive of February 7, 1963. In fact, he acted directly contrary to the instructions contained therein. It is further clear that by using the Secretary-Treasurer's per-capita tax reports to determine voter eligibility for the July 13 election, 58 persons were permitted to vote notwithstanding the fact that they were delinquent in their payments to the defendant. (Admission 20, 21.)

Were the 58 persons who were delinquent in their payments to the defendant union eligible to vote in

the July 13 election? In answering this question, we must look to the constitution of the defendant union. In 87 Corpus Juris Secundum, *Trade Unions*, § 13, p. 776, the following observations are made relative to the construction of union constitutions:

> Trade union constitutions should be read in their living context. The interpretation or construction of the constitution and laws of a union is for the union, through its appropriate board or officers; and the courts will accept such interpretation, as long as there is no claim of fraud, and as long as the officer or body on which this power of interpretation has been conferred does not substitute legislation or amendment for construction, does not transgress the bounds of reason, common sense, or fairness, or act arbitrarily, or contravene public policy or the law of the land, or destroy the property or contractual rights of, the members. Where the language of a rule is clear, no official may nullify it under the guise of interpretation.

As has already been noted, the Secretary urges that under the clear and unambiguous language of the defendant's constitution the 58 persons referred to above were ineligible to vote in the July 13 election.

Article VIII, § 5, of defendant's constitution clearly and explicitly provides that where a member fails to make a timely payment of dues he "shall be considered in arrears and suspended without notice." In answering plaintiff's interrogatories, defendant has indicated that a substantial number of its members have at one time or another been automatically suspended, pursuant to Article VIII, § 5, for nonpayment of dues. Further, the International's directive of February 7, 1963, (quoted on page 8, supra) clearly indicates that a Local is obligated to

suspend a member who fails to make a timely payment of his dues.[5]

The Court finds that under the clear and unambiguous language of Article VIII, § 5, members who fail to make a timely payment of their dues are automatically in arrears and should be suspended without notice.

Under the clear and unambiguous language of Article VIII, § 5, a member who has fallen in arrears has "no rights except the right to be readmitted in accordance with Article VIII, § 7." To be readmitted "in accordance with" Article VIII clearly requires that the member pay the established readmission fee. Thus, the Court finds that under defendant's constitution once a member has fallen in arrears and has thereby lost his rights, he may only regain the same by paying the established readmission fee. Moreover, there is no provision in the defendant's constitution which gives the Secretary-Treasurer of the Local the right to waive the required readmission fee.

As has previously been noted, 58 of the persons who voted in the July 13 election were either delinquent in the payment of their May, 1963 dues or had not paid or completed payment of mandatory readmission fees. The Court finds that these persons

[5] Between May 1, 1962, and January 1, 1963, 357 members were so suspended; between January 1, 1963, and May 1, 1963, 229 were so suspended; between May 1, 1963, and June 8, 1963, 22 were so suspended; between June 8, 1963, and July 13, 1963, 73 were so suspended. (Defendant's answers to plaintiff's interrogatory No. 8.) The substantiality of these figures is readily apparent when viewed in relation to total membership figures. Defendant has indicated that it had 967 members on May 1, 1962, 730 on May 1, 1963, 717 on June 8, 1963, and 729 on July 13, 1963. (Defendant's answers to plaintiff's interrogatory No. 7.)

were not, under any reasonable construction of defendant's constitution, members in good standing and therefore, were ineligible to vote in said election.

Defendant has urged that plaintiff's motion for summary judgment should be denied for the reason that there is an unresolved question of fact as to whether the practices followed by the defendant were reasonable. Defendant's position seems to be that even if it did not follow the eligibility standards of its constitution and bylaws, it must nonetheless be determined whether the standards actually followed were reasonable. This position lacks merit, for it seems clear that one of the basic purposes behind the election provisions of the Act was to require unions to comply with the provisions of their constitution and bylaws in the conduct of their elections. Where, as here, the conduct complained of cannot be justified under any reasonable construction of the union's constitution or bylaws, it would be most anomalous to hold that the conduct did not violate the Act because it was, in some abstract sense, "reasonable." [6]

On January 27, 1966, the Court heard oral arguments on the plaintiff's motion for summary judgment. On that date counsel for the defendant presented to the Court a copy of a directive of the International Union dated January 17, 1966, and ad-

[6] It is clear from Mr. Mason's affidavit that special consideration was given to only those delinquent members who Mr. Mason felt were deserving; and, further, that in granting such special consideration Mr. Mason was not acting pursuant to any authority granted to him by the defendant's constitution or bylaws. Further, Mr. Mason did not maintain records pertaining to his actions. If the Court was required to view the conduct complained of herein in the abstract, it would be forced to conclude, on the basis of the affidavits, admission and answers to plaintiff's interrogatories, that said conduct was, as a matter of law, unreasonable.

dressed to all local unions, district councils and members. The directive reads as follows:

RE: Right to Vote

Dear Sirs and Brothers:

The General Executive Board, at its November 29–December 10, 1965 meeting was made aware of a grave danger to our membership, which has developed as a result of a *misterpretation* of the Uniform Local Union Constitution and Release #1 of 1963, and which is threatening to deprive many members of long standing of their rights and benefits under the Union's Constitution and collective bargaining agreements, particularly the right, otherwise available, under the Union's Constitution to vote in the Union's general election for the candidate of their choice.

The General Executive Board was presented with the issue of whether or not members in good standing *on the day of election* must be deprived of their right to *vote on election day* because at one time or another during the course of their membership, dues which they offered late were accepted by the Local Union, and the Local Union remitted per capita tax within the Constitutional period to the International Union, as a result of which the member's good standing was not, in fact, interrupted.

The General Executive Board, for years, knew of a long-standing practice in many Local Unions where per capita tax payments were being improperly forwarded to the International Union by Local Unions. Release #1 of 1963 was directed principally toward advising Secretary-Treasurers of Local Unions on the proper conduct of their office, the payment of dues and the persons on whose behalf per capita tax should be forwarded to the International Union.

However, nothing contained in Release #1 nor in the Union's Constitution, stated in terms or inferred, that such a member whose good standing was not interrupted should be deprived of his legal and Constitutional right, otherwise available, to vote when he approached the polling place on election day. Nor was this, in fact, the intent of the General Executive Board in issuing Release #1, nor of the drafters of the Uniform Local Union Constitution.

Indeed, to the contrary, the Board had consistently maintained the position throughout the years, that its Constitution must be interpreted as a *living document* in the light of the Union's history and tradition—giving due regard to its unique and real needs—not from a formalistic standpoint. It was never the intention of the Union in adopting its Constitution, or of the General Executive Board in issuing Release #1 or in otherwise interpreting its Constitution to *deprive members* of their right to vote. The Board had always interpreted its Constitution liberally to preserve the right of members to vote. Particularly, in dealing with problems in the election area, the Board had always placed substantial requirements over form. The Board will continue to adhere to this view.

The Board was troubled by the misinterpretation of the Constitution and Release #1, which threatens to deprive wholesale numbers of members of their right to vote under the Union's Constitution and the Act. First, it felt that such an interpretation was unduly infringing upon the prerogative of the Board to interpert its Constitution in a fair and responsible manner in the interest of the membership, and was seeking to substitute the judgment of persons outside the Union on the meaning of the Union's Constitution for that of the Union's governing body, which had been elected by the

membership and charged with that responsibility.

But, in the Board's view, the principal vice of this hypertechnical interpretation was that it completely ignored the unique, real problems confronting the Union and its membership.

The Board in interpreting its Constitution, is charged with the responsibility of giving due regard to the unique problems confronting the membership.

In issuing Release #1, it was attempting to instruct its Locals on solid financial practices to promote their long run interests. The Board adheres to that view and is in no way attempting to relieve Secretary-Treasurers from their obligations. The Board knew then and it knows now that if its Constitution was construed to disenfranchise such members, a very substantial percentage of the total membership would be deprived of their right to vote. It knew then and it knows now that if such a harsh interpretation was placed upon the Union's Constitution, it would result in depriving many tens of thousands of their members and their families of death benefits built up over the years and of pension rights under collective bargained pension plans throughout this country. Moreover, it knows that if the Union were to adopt the interpretation urged, it would only suspend those members which would simply mean that they would lose their benefits, accruing over the years and be required to pay a new initiation fee under the Union's Constitution as a new member. The Board flatly rejected the opportunity for the International Union collecting such a financial windfall and it instructed the Executive Officers to advise each affiliate of the following action and take whatever possible actions are necessary to defend the right of the membership to act in that regard.

After due consideration, the Board

"VOTED: In accordance with the power and authority vested in it by the International Union Constitution, Uniform Local Union Constitution, and Uniform District Council Constitution, that its Constitutional provisions shall not be interpreted to deprive members of their legal and constitutional right to vote in those instances where local unions have accepted dues late and remitted per capita tax within the Constitutional period to this International Union, so that the local unions were never notified by the International Union that such members were suspended. To the extent that anything contained in Release #1 of 1963 can be construed to reach a contrary conclusion or to cast doubt upon this position, it is hereby modified to that extent nunc pro tunc."

All affiliates and members please take note and abide yourselves accordingly.

Respectfully and fraternally yours,

(S) Jos. V. Moreschi.
(S) Peter Fosco.

Presented to the Court, along with the above-quoted directive, was an affidavit of Robert J. Connerton, General Counsel of the International. In his affidavit Mr. Connerton states that the directive of January 17 is "a formal constitutional interpretation by the General Executive Board binding on all Local Unions and officers."

While the directive of January 17 may reflect an official action taken by the General Executive Board, the directions contained therein are ambiguous, inconsistent with the clear and unambiguous language of the Uniform Local Union Constitution, and, further, are in many respects inconsistent with the instructions given in the directive of February 7, 1963. As has previously been noted, the defendant clearly

acted in violation of its constitution in allowing certain delinquent persons to vote in the July 13 election. The Court finds that the directive of January 17 does not, and cannot, exculpate the defendant from the consequences of its previously improper conduct.[7]

Defendant urges that, even if it is found that the defendant violated its constitution in the conduct of the July 13 election, plaintiff's motion for summary judgment must nonetheless be overruled for the reason that there is an unresolved question of fact as to whether the improper conduct "may have affected the outcome of the election" within the meaning of Section 402(c)(2) of the Act. Defendant states that even if certain ineligible voters voted in the July 13 election it is not clear which candidate they voted for. Defendant's position seems to be that where ineligible votes have been cast it must be shown not only that it is mathematically possible that the outcome of the election was affected, but, also, that the manner in which the ineligible voters voted actually did affect the outcome of the election. Defendant evidently has failed to recognize, however, that Section 401(d) of the Act required that the election in question be held by secret ballot. To require or allow inquiry into the manner in which certain persons have voted would be entirely inconsistent with the Act's requirement that the ballot be secret. The Court, therefore, finds that the Act's secret ballot requirement forecloses any inquiry into how particular persons voted. The Court further finds that if the number of ineligible votes cast is sufficient to make it mathematically pos-

[7] The Court is in no manner indicating what steps the International or the Local can now reasonably take to resolve any problems which might result from such previous misconduct. Further, the Court should point out that this opinion is limited strictly to a determination of whether certain persons had a *right to vote* in the July 13 election.

sible that the outcome of the election was affected, this fact alone conclusively establishes the Act's requirement that the conduct complained of may have affected the outcome of the election.

As has previously been noted, the July 13 election was decided by 19 votes. In said election, 58 ineligible votes were cast. In light of what has been stated above, it is clear that the casting of these votes may have affected the outcome of the election.[8]

The Court finds that, with regard to the portion of the complaint here under consideration, there remains no genuine issue as to any material fact. The Court further finds that the defendant, in the conduct of the July 13 election, violated Section 401(e) of the Act, and that such violation may have affected the outcome of said election. Plaintiff's motion for summary judgment will, therefore, be granted.

ELIGIBILITY OF CANDIDATES

Defendant's constitution requires candidates for office to have maintained continuous good standing in the International for a period of two years and continuous good standing in the Local for a period of one year (Article V, § 1). Prior to the June 8 election, the defendant's Election Committee considered the matter of the eligibility of candidates. In determining eligibilty, the Committee referred to the Secretary-Treasurer's per-capita tax reports and the membership book of each potential candidate. (Admission 12). As has previously been noted, the per-

[8] As has previously been noted, the 58 voters involved either (1) had not paid their May, 1963 dues as of July 13, 1963, or (2) had not paid or completed payment of mandatory readmission fees. The number of persons within either category would, standing alone, have been sufficient to have affected the outcome of the election.

capita tax reports did not give an accurate indication of whether individual members were in good standing at the date of the nominations or election, and, further, did not accurately indicate whether members had been in good standing in the defendant union for the year preceding the election or in the International for two years preceding the election. (Admission 11). The Election Committee did not examine the individual members' ledger cards, which cards would have accurately reflected the members dues payments.

Within one year prior to the nominations and election, Andrew Jackson, the winner of the July 13 election, had been in arrears in his dues payments for more than two months. (Admission 18.) As has previously been noted, once a member falls in arrears he automatically loses his good standing. To regain good standing he must, under Article VIII of defendant's constitution, remit to the union the established readmission fee.

Under the circumstances set out above, it is clear that Mr. Jackson had not been in continuous good standing in the International for two years and, further, had not been in continuous good standing in the Local for at least one year. A similar situation prevailed with regard to Mr. Ferry. (Admission 16.) It is clear, however, that Mr. Dial had been in continuous good standing in the International for two years and, further, had been in continuous good standing in the Local for at least one year.

In protesting the conduct of the July 13 election, Mr. Dial made no claim relative to the eligibility of candidates. It would appear, therefore, that there is a substantial question as to whether, under the reasoning of Judge Connell's opinion, the Secretary is precluded from attacking the election of July 13 on this

basis. Since, however, the Court has already found that the July 13 election must be set aside on the basis of the ineligibility of certain voters, neither this question nor the question of whether the election should be set aside on the basis of the ineligibility of candidates (assuming that the Secretary is not precluded from attacking the election on this basis) need be resolved.

An order will be entered in accordance with this memorandum opinion. Since the July 13, 1963, election concerned a single office, and, further, since the defendant will obviously be holding a general election within several months, it is clear that many practical problems are presented with regard to the provisions to be contained in said order. The Court, therefore, requests that counsel meet within ten days and attempt to agree upon a final order which takes into account the practical problems involved. If the parties are able to agree upon an order, said order should be submitted to the Court on or before April 15, 1966. If the parties are unable to agree upon an order, the parties should inform the Court to this effect on or before the same date.

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No. 58

In the Supreme Court of the United States

OCTOBER TERM, 1966.

W. WILLARD WIRTZ,
Secretary of Labor,
Petitioner,

vs.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF RESPONDENT IN OPPOSITION.

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No. 1117.

In the Supreme Court of the United States

OCTOBER TERM, 1966.

W. WILLARD WIRTZ,
Secretary of Labor,
Petitioner,

vs.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The order of the Court of Appeals is reported unofficially at 56 L. C. ¶ 11,781 and found at pp. 9-10 of the petition. The opinion of the district court striking portions of the complaint is reported at 231 F. Supp. 590 and set forth at pp. 11-22 of the petition. The opinion of the district court sustaining the motion of the Secretary of Labor for summary judgment with respect to the remaining portions of the complaint is reported unofficially at 53 L. C. ¶ 11,213 and set forth at pp. 23-42 of the petition.

JURISDICTION.

The judgment of the court of appeals was entered on December 15, 1966 (App. A of petition). The petition for a writ of certiorari was filed on March 3, 1967. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED.

1. Whether an unchallenged intervening union general election renders moot an action by the Secretary under Title IV of the Labor-Management Reporting and Disclosure Act of 1959, to set aside a prior union election which was not challenged by any union member.

2. Whether the exhaustion of internal remedies provided by the Act is a prerequisite to the Secretary's exercise of power to institute an action to invalidate an election.

STATUTE INVOLVED.

The relevant statutory provisions are set forth in Appendix F to the petition for writ of certiorari in *Wirtz v. Local 153, Glass Bottle Blowers Association, etc.*, No. 1115, filed March 3, 1967. Also involved is Section 601(a) of the Act, 73 Stat. 539, 29 U. S. C. § 521(a), set forth in Appendix F, p. 19, *infra*.

STATEMENT OF THE CASE.

On June 8, 1963 respondent Union held its general election of officers. The office of Business Representative was not filled because the votes for two nominees resulted in a tie. A run-off election was held on July 13 to resolve the tie.

An unsuccessful candidate filed a protest with the international union claiming irregularities in the conduct of this run-off election. He had not raised any objection to the prior general election of June 8, 1963. After a hearing the international union determined that the irregularities shown did not affect the outcome of the election and turned down the charges. The candidate thereafter filed a protest with the Secretary claiming that the run-off election had been conducted in violation of the Union's constitution and bylaws.

Following an investigation the Secretary brought an action on February 7, 1964 in the district court to invalidate the challenged run-off election of July 13, 1963, as well as the earlier election of June 8, 1963. The complaint alleged that irregularities affected the outcome of both elections, and a new general election under the supervision of the Secretary was sought pertaining to all union offices (Appendix A, pp. 11-15, *infra*).

On March 4, 1964 the Union moved to dismiss that part of the complaint seeking to declare null and void the June 8, 1963 general election of officers. The District Court (Connell, C.J.) granted this motion, holding that the Secretary was precluded from attacking this election because the union member had not complained about this election, and thus failed to exhaust internal union remedies (App. B of petition). On August 19, 1964 the Union answered the remaining part of the complaint not affected by the district court's ruling.

Thereafter, on April 18, 1966, the district court (Battisti, J.) granted the Secretary's motion for summary judgment respecting the remaining portion of the complaint directed to the run-off election of July 13, 1963 for the office of Business Representative. It ordered the next scheduled election for Business Representative to be conducted under the Secretary's supervision with the winner to serve a full constitutional term (Appendix B, p. 15, *infra*). The Union did not appeal from this judgment.

The Union's next regularly scheduled election of officers was held on June 11, 1966. The election of Business Representative was held at the same time and place under supervision of the Department of Labor as directed by the district court. The Union's election judges requested the attendance of the Secretary's representatives during the general election of officers and they remained until all ballots were counted and the winners announced (Appendix D, pp. 17-18, *infra*). The successful candidate was certified to the district court (Appendix E, pp. 18-19, *infra*).

On June 10, 1966 the Secretary filed notice of appeal from the orders of July 14, 1964 dismissing the portion of the complaint challenging the general election, and of April 18, 1966 granting the Secretary's motion for summary judgment. The Union filed its motion to dismiss in the court of appeals on August 20, 1966. On December 15, 1966 the court of appeals entered its order, holding that the union officers held their positions pursuant to the June, 1966 general election, and this fact rendered moot the question on appeal. To prevent the district court decision from serving as precedent, it vacated the judgment of the district court dismissing a portion of the Secretary's suit, and remanded with instructions to dismiss the entire

complaint as moot insofar as it related to the 1963 general election (App. A of petition).

ARGUMENT.

I.

There Is No Conflict of Decision.

The June, 1966 general election held at the same time and place as the supervised election for Business Representative, was not affected by any irregularity. Indeed, the Secretary conceded this by stating in the petition: "* * * there is no evidence in the record as to whether the violation continued to 1966 * * *" (p. 4). None of the deficiencies which affected the run-off election in July, 1963 were present at the supervised election in June, 1966.

The Secretary suggests that persons not eligible to vote in the supervised election for Business Representative "could have voted" at the same time and in the same hall, in the unsupervised general election (footnote 1, p. 4 of petition). This is not the fact. Individuals found not eligible to vote in the supervised election were not permitted to vote in the general election (Appendix D, pp. 17-18, *infra*).

The District Court directed a supervised election, recognizing that "many practical problems were involved" (App. C of petition, p. 42). Election details were worked out carefully between the Secretary's representatives and the Union's officers (Appendix D, pp. 17-18, *infra*). The results were certified on July 7, 1966 by the Acting Secretary of Labor (Appendix E, pp. 18-19, *infra*). It is not likely that the Secretary would certify that the supervised part of the election was conducted in accordance with the Act, and remain silent if there had been irregularity with respect to other parts of the election events.

It is clear therefore that the present union officers hold office as a result of an intervening unchallenged election in 1966. Their right to office for a full constitutional term should not be jeopardized by irregularities existing in the 1963 election. To recognize the asserted 1963 irregularities would mean setting aside the unchallenged June, 1963 election, despite the intervening 1966 general election, and repeating the elaborate nominating and election procedures under the Secretary's supervision with the outcome in no way affected by what occurred four years before. This is wholly unnecessary and would serve no remedial purpose. For, as was stated in *Wirtz v. Local Unions 410, etc., Int'l. Union of Operating Engineers,* 366 F. 2d 438, 442 (CA-2, 1966):

> "* * * It would serve no practical purpose with respect to these locals to declare their 1962 elections void because the terms of office thereby conferred have expired. And because Title IV does not permit the Secretary to seek either to enjoin future elections, or to declare a given candidacy requirement unlawful absent a valid complaint and an investigation of its application to a specific violation, * * * we conclude that we have no power to afford the Secretary relief and therefore that these cases are moot."

This reasoning was approved and followed by the Court of Appeals for the Third Circuit in the *Glass Bottle Blowers* case (Appendix A of petition in *Wirtz v. Local 153, Glass Bottle Blowers Association, etc.,* No. 1115, October Term, 1966), and was followed by the Court of Appeals for the Sixth Circuit in this case. There is no conflict among the courts of appeals on this issue and the Secretary does not contend that there is.

II.

The Decision Below Is Clearly Correct.

The court of appeals accepted the Union's argument that setting the 1963 election aside and directing a supervised election would "serve no purpose here in the light of the subsequent election which has been held" (App. A, p. 10 of petition). It also adopted the Secretary's suggestion that if the case was moot, it should be remanded "to the district court with directions to vacate the July 13, 1964 decision * * * and to dismiss as moot those portions of the complaint which are addressed to the union's general election of officers held June 8, 1963" (Secretary's Response to Motion to Dismiss Appeal, p. 12, court of appeals proceedings). This is what the court below did, relying upon this Court's decision in *United States v. Munsingwear*, 340 U. S. 36 (App. A, p. 10 of petition), and it was clearly correct in doing so.

III.

The Question Involved Is No Longer Important in the Administration of the Act.

The exhaustion of remedies provided by the Act is a prerequisite to the Secretary's exercise of power. This was the view of the district court in the instant case and of the courts of appeals in *Wirtz v. Local Unions 410, etc.*, 366 F. 2d 438 (CA-2, 1965), and *Wirtz v. Local Unions No. 9, etc.*, 366 F. 2d 911 (CA-10), App. A, p. 11 of petition in No. 1116, October Term, 1966.

The exhaustion requirement may indeed restrict the Secretary's remedial power but Section 402 of Title IV of the Act is self-limiting. It provides that only when the union member "has exhausted the remedies available under the constitution and bylaws" may he file a complaint

with the Secretary. The Secretary investigates "such complaint" and if he finds probable cause to believe that an unremedied violation occurred, he may file suit against the union. Pending a court decision, the challenged election is "presumed valid" and the union's affairs continue to be conducted by the officers elected in the challenged election. Title IV, § 402, 29 U. S. C. § 482.

No claim of any violation was made by the member concerning the Union's June, 1963 general election. The tie votes cast for Business Representative caused the July run-off election, and triggered the protest by the unsuccessful candidate about irregularities in the latter contest only. The Secretary sought however to set aside the unchallenged June election as well as the second contest to resolve the tie and elect the Business Representative.

When the district court sustained the Union's motion to dismiss that portion of the complaint directed to the June, 1963 election (App. B of petition, pp. 11-22), it was faithful to the legislative history of the Act and the statutory scheme enacted to carry out the intent of Congress. The legislative history is conclusive that as a precondition to the Secretary's action, "* * * the member must show that he has pursued any remedies available to him within the union and any parent body in a timely manner." S. Rep. No. 187, 86th Cong., 1st Sess. (1959), p. 21; *Calhoon v. Harvey,* 379 U. S. 134, 140.

The statutory scheme is not affected by the complaining member's ability to file "a carefully drafted complaint." However artless the complaint may be worded, if internal remedies are to be followed it is necessary that unions be given the opportunity to correct irregularities. Congress deliberately set forth a procedure to be followed. Had it wished to entrust the Secretary with an open-end power it would have done so, as it did in the National

Labor Relations Act, for example, where the power to issue a complaint is not limited by an exhaustion procedure, but rather by a time limitation that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge * * *," Section 10(b), 61 Stat. 146, 29 U. S. C. § 160(b); *Local Lodge No. 124 v. N. L. R. B.*, 362 U. S. 41.

The reasoning of the district court below in refusing to permit the Secretary to expand the base of protest was cited with approval in *Local 57, Int'l. Union of Operating Engineers v. Wirtz*, 346 F. 2d 552, 554 (CA-1, 1965). The Court of Appeals for the First Circuit held that the power to set aside a union election "is conditioned upon the filing of a complaint by an individual union member who has exhausted his internal union remedies." The court went on to distinguish between the statutory limitations on the Secretary's power to *initiate* court action to vacate an election under Section 402, and his power to investigate union elections under Section 601 (Appendix F, p. 19, *infra*). *Wirtz v. Local 191, Int'l. Bh'd. of Teamsters*, 321 F. 2d 445, 448 (CA-2, 1963), followed.

It is not unreasonable to restrict the Secretary to the issue complained of as a condition for the exercise of power.[1] If Congress believed otherwise it would not have presumed the challenged election to be valid and allowed elected union members to hold office.

The Secretary waited until June 1966 to appeal from the 1964 judgment limiting relief to the office of Business

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[1] *Wirtz v. Local Unions No. 406, etc.*, 254 F. Supp. 962, 967 (D. C. La. 1966); *Wirtz v. Local Union No. 9, Int'l. Union of Operating Engineers*, 51 L. C. § 19,579 (D. C. Col., 1965); *Wirtz v. Local Union 169, Int'l. Hod Carriers', etc.*, 246 F. Supp. 741, 751 (D. C. Nev. 1965); Cox, "*The Role of Law in Preserving Union Democracy*," 72 Harv. L. Rev. 609, 633.

Representative. This ruling was a "final decision," 28 U. S. C. § 1291, and, "Under § 1291 an appeal may be taken from any 'final' order of a district court," *Gillespie v. U. S. Steel Corp.*, 379 U. S. 148, 152. In the early construction of the Act a timely appeal from the district court's judgment for a speedy resolution of the question involved would not have been inconvenient and the cost insignificant. There would then be no occasion for the delay now complained of by the Secretary. *Cf. United States v. Munsingwear*, 340 U. S. at 40, 41. The issue of law is now settled.

CONCLUSION.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

MORTIMER RIEMER,
Counsel for Respondent Union.

Of Counsel:
ROBERT J. CONNERTON.

April, 1967.

APPENDIX A.

COMPLAINT.

I.

Plaintiff brings this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 *et seq.*, 29 U. S. C. 401 *et seq.* (1958 ed. Supp. IV)), hereinafter referred to as the Act.

II.

Jurisdiction of this action is conferred upon the Court by Section 402(b) of the Act (29 U. S. C. 482(b)).

III.

Defendant Local Union No. 125, International Hod Carriers' Building and Common Laborers' Union of America, hereinafter referred to as Defendant Local, is and at all times relevant to this action has been, an unincorporated association maintaining its principal office at 29 Fifth Avenue in the City of Youngstown, County of Mahoning, State of Ohio, within the jurisdiction of this Court.

IV.

Defendant Local is, and at all times relevant to this action has been, a local labor organization engaged in an industry affecting commerce within the meaning of Sections 3(i), 3(j) and 401(b) of the Act (29 U. S. C. 402(i) and 402(j) and 481(b)).

V.

Defendant Local, purporting to act pursuant to and in accordance with the constitution of the International Hod Carriers' Building and Common Laborers' Union of America, hereinafter referred to as the International, and Defendant Local's constitution, conducted an election of officers which consisted of an election held on June 8, 1963 and a run-off election for the office of Business Representative on July 13, 1963. Said elections were subject to the election provisions of Title IV of the Act.

VI.

By letter dated August 11, 1963, a member in good standing of Defendant Local, acting pursuant to and in accordance with the International's constitution and the constitution of Defendant Local filed a protest and appeal to the General Executive Board of the International Union concerning the conduct of the July 13, 1963 run-off election. Having received a final denial of his protest by the General Executive Board by letter dated December 2, 1963 the member on December 9, 1963 filed a timely complaint with the plaintiff herein, alleging violations of Section 401 of the Act (29 U. S. C. 481), all in accordance with Section 402(a) of the Act (29 U. S. C. 482(a)).

VII.

Pursuant to Section 402(b) of the Act (29 U. S. C. 482(b)), Plaintiff proceeded to investigate said complaint and, as a result of facts shown by said investigation, found probable cause to believe that violations of Title IV of the Act had occurred with respect to both elections referred to in paragraph V and had not been remedied at the time of institution of this suit, and that such violations may have affected the outcome of said elections.

VIII.

Defendant Local violated Title IV of the Act regarding the elections conducted on June 8, 1963 and July 13, 1963 in the following respects:

(a) Defendant Local failed to provide adequate safeguards to insure a fair election on June 8, 1963, in violation of Section 401(c) of the Act (29 U. S. C. 481(c)) by permitting unauthorized ballots to be used and counted and by failing to provide adequate safeguards.

(b) Defendant failed to conduct the elections of June 8, 1963 and July 13, 1963 in accordance with its aforesaid applicable constitutional provisions, in violation of Section 401(e) of the Act (29 U. S. C. 481(e)), as follows:

(1) Members not in continuous good standing were permitted to be candidates in the elections of June 8, 1963 and July 13, 1963;

(2) Members delinquent in dues for April, 1963 were permitted to vote on June 8, 1963;

(3) Members who had not completed payment of readmission fees were permitted to vote on June 8, 1963;

(4) Members who had not paid the constitutionally required readmission fees were permitted to vote on June 8, 1963;

(5) Members delinquent in dues for May, 1963 were permitted to vote at the July 13, 1963 run-off election;

(6) Members who had not completed payment of readmission fees were permitted to vote at the July 13, 1963 run-off election;

(7) Members who had not paid the constitutionally required readmission fees were permitted to vote at the July 13, 1963 run-off election.

IX.

The violations of Section 401 of the Act (29 U. S. C. 481) found and alleged above may have affected the outcome of the elections of June 8, 1963 and July 13, 1963.

WHEREFORE, Plaintiff prays for judgment.

(a) declaring the following elections to be null and void;

i. the election of its officers held by Defendant Local on June 8, 1963;

ii. the run-off election held for the office of Business Representative held on July 13, 1963;

(b) enjoining and restraining Defendant Local, its officers, agents, servants, employees, attorneys and all persons in active concert or participation with them from concealing, selling, conveying, transferring, or otherwise disposing of any property or assets belonging to said defendant or in which it has any direct or indirect interest until further order of the Court;

(c) directing the conduct of a new election of officers under the supervision of the plaintiff;

(d) for the costs of this action; and

(e) for such other relief as may be appropriate.

APPENDIX B.

ORDER.

(Entered April 18, 1966.)

Upon consideration, after argument by opposing counsel,

IT IS ORDERED that plaintiff's motion for summary judgment, with regard to that portion of his complaint directed to the run-off election of July 13, 1963 for the office of Business Representative, is hereby granted.

IT IS FURTHER ORDERED that the run-off election conducted by the defendant on July 13, 1963 for the office of Business Representative is hereby declared to be null and void and set aside; that the next regularly scheduled election for the office of Business Representative will be held under the supervision of the plaintiff, as provided for in Section 402(c) of the Act (29 U. S. C. 482(c)) and in accordance with the Act and defendant's uniform local constitution as long as they are not inconsistent with the provisions of the Act; that after such election has been held, the ballots canvassed and results announced, the successful candidate will be installed in office as defendant's Business Representative for a full constitutional term of office; that this action will hold on the docket of this Court pending completion of the nomination, election and installation of the officer elected as hereby ordered; and that after completion of the nomination and election of said officer, if plaintiff certifies to the Court that said election was conducted in accordance with the provisions of the Act and defendant's constitution so long as they are not inconsistent with the provisions of the Act, the Court may thereupon, upon approval of such certification, enter a judgment declaring that such person has been elected to said office.

FRANK J. BATTISTI,
United States District Judge.

APPENDIX C.

ORDER.

(Entered July 22, 1966.)

It appearing to the Court that pursuant to an order of this Court dated April 18, 1966, the defendant has conducted a new election for the office of Business Representative under the supervision of the plaintiff, and that the plaintiff has filed a certification of election, certifying the name of the person who was elected to such office in such election, and further certifying that the new election was conducted in accordance with the provisions of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (29 U. S. C. 481 *et seq.*) and in conformity with the constitution and bylaws of the defendant labor organization, so far as lawful and practicable; and the Court having considered said certification and being fully advised, it is, upon motion of the plaintiff, hereby

ADJUDGED, ORDERED, AND DECREED that Andrew Jackson, the person named in the certification of election filed as aforesaid by the plaintiff is the duly elected officer of the defendant labor organization for the designated office listed therein, and for a full constitutional term of office.

FRANK J. BATTISTI,
United States District Judge.

APPENDIX D.

AFFIDAVIT OF MARTIN M. MASON.

(Forming Part of Motion to Dismiss in Court of Appeals.)

MARTIN M. MASON, being first duly sworn, deposes and says that he resides at 618 North Loveless Avenue, in the City of Youngstown, Ohio and that he is and has been at all times pertinent hereto, the Secretary-Treasurer of Laborers' International Union of North America, Local No. 125.

Your affiant says further that Laborers' International Union of North America, Local No. 125, held its general election of officers on June 11, 1966 from 9:00 A.M. to 7:00 P.M. at its hall at 29 Fifth Avenue, Youngstown, Ohio, and that a special election for the office of Business Representative was conducted on the same day under the supervision of the Department of Labor.

Joseph D. Caiola, Rocco DeMarco, Charles S. Mato and Richard A. Crino represented the Department of Labor in supervising the election for Business Representative and observed and assisted during the general election of officers at the request of the election judges. The representatives handled the eligibility lists and in several instances determined that members were not eligible to vote. These members did not vote in either election. The representatives also supervised the distribution of ballots with election judges, handing out ballots for both elections. Department representatives also assisted members who could not read, in the voting booth and in depositing ballots in the box.

The ballots cast in the election for Business Representative were counted first and this count was completed at approximately 9:00 P.M. Thereafter, the representatives of the Department of Labor stayed and observed the

counting and tally of ballots cast in the general election and the declaration of results. The representatives left after all ballots were counted and the election judges announced the winners.

MARTIN M. MASON.

(Jurat omitted.)

APPENDIX E.

CERTIFICATION OF ELECTION.

The nominations and election having been conducted in the above matter under the supervision of the Secretary of Labor, United States Department of Labor, pursuant to an Order entered by the Court on the eighteenth (18) day of April 1966, and the said nominations and election having been conducted in accordance with the provisions of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (29 U. S. C. 481 *et seq.*) and in conformity with the constitution and by laws of the defendant labor organization so far as lawful and practicable, therefore:

Pursuant to Section 402(c) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U. S. C. 482(c)).

IT IS HEREBY CERTIFIED that the following named candidate has been duly elected to the office designated:

Andrew Jackson Business Representative.

As part of this Certification, the following exhibits are attached hereto, which are true copies of the documents in the record of the holding of the election:

Exhibit A. Memorandum from Mr. Frank M. Kleiler, Director, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, reporting on the supervision of the election.

Exhibit B. Copy of Notice of Election.

Exhibit C. Interpretation of Article VII, Section 6 of the Hod Carriers' Uniform Local Union Constitution rendered by the General President.

Exhibit D. Certification on Conduct of Election.

Exhibit E. Copy of Official Tally Sheet.

Exhibit F. Certification on Tally of Ballots.

Signed at Washington, D. C., this 7th day of July, 1966.

/s/ JOHN F. HENNING,

Acting Secretary of Labor.

APPENDIX F.

STATUTES INVOLVED.

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 539, 29 U. S. C. 521.

TITLE VI. MISCELLANEOUS PROVISIONS.

INVESTIGATIONS BY SECRETARY.

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

SUPREME COURT, U. S.
FILED
AUG 16 1967
JOHN F. DAVIS, CLERK

Nos. 57 and 58

In the Supreme Court of the United States

OCTOBER TERM, 1967

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

v.

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE THIRD AND SIXTH CIRCUITS

BRIEF FOR THE SECRETARY OF LABOR

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 57

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

v.

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL–CIO

No. 58

W. WILLARD WIRTZ, SECRETARY OF LABOR, PETITIONER

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE THIRD AND SIXTH CIRCUITS

BRIEF FOR THE SECRETARY OF LABOR

OPINIONS BELOW

In No. 57, the opinion of the court of appeals (57 R. 65) is reported at 372 F. 2d 86, and the opinion and judgment of the district court (57 R. 38) is reported at 244 F. Supp. 745. The order of the district court on the Secretary's motion for post-judgment relief (57 R. 55) is unreported.

In No. 58, the order of the court of appeals (58 R. 112) is reported at 375 F. 2d 921; the opinion of the

district court striking portions of the complaint (58 R. 5) is reported at 231 F. Supp. 590; and the opinion of the district court on the Secretary's motion for summary judgment (58 R. 92) is unreported.

JURISDICTION

In No. 57 the judgment of the court of appeals (57 R. 70) was entered on December 16, 1966. In No. 58, the judgment of the court of appeals (58 R. 112) was entered on December 15, 1966. The petitions for writs of certiorari were filed on March 3, 1967, and granted on May 15, 1967 (57 R. 72; 58 R. 114). We invoke the jurisdiction of this Court under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Title IV of the Labor-Management Reporting and Disclosure Act of 1959 establishes standards for union elections. The Secretary of Labor, upon the complaint of a union member who has failed to obtain within three months redress through the internal processes of the union, is authorized to bring suit. If the court finds that a violation of the Act has occurred which may have affected the outcome of an election, it is directed to declare the election void and to order a new election under the Secretary's supervision. We present the following questions relating to this statutory scheme:

1. Whether the Secretary's suit is mooted if, during its pendency, the union holds another election.

2. Whether the Secretary may challenge only the precise violations specified in the member's complaint to the union (No. 58).

3. Whether an unreasonable candidacy qualification may have affected the election's outcome when it rendered more than 97 percent of the union membership ineligible for elective office, including a member who had actually been nominated (No. 57).

STATUTE INVOLVED

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*, are printed in the Appendix, *infra*, pp. 55–62.

STATEMENT

1. *No. 57.*—The Secretary of Labor, on March 31, 1964, filed suit asking the district court to set aside an election which had been conducted by the defendant union on October 18, 1963, and to direct the holding of a new election, to be supervised by the Secretary. The action was instituted pursuant to Section 402 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 482), which authorizes the Secretary of Labor to bring suit in respect of a violation of Section 401 of the Act after receiving a complaint from a union member who has exhausted his internal union remedies, and directs the district court to grant the relief prayed for if it finds that such a violation may have affected the outcome of an election. The complaint alleged that the union had violated Section 401(e) of the Act, which provides that in an election subject to the Act every member of a labor organization shall "be eligible to be a candidate and to hold office (subject to * * * reasonable qualifications uniformly imposed) * * *."

It was stipulated that respondent, Local 153, is a

local labor organization chartered by, and subordinate to, the Glass Bottle Blowers Association of the United States and Canada, AFL–CIO, is engaged in an industry affecting commerce as defined by the Act, and is therefore subject to the requirements of Title IV; that the International Constitution and the local's by-laws require all candidates for local union office to have attended 75 percent of the monthly union meetings in the two years prior to the election; that members were not excused on account of illness but only if they were required to be at work when the union meetings were held; and that excuses had to be submitted in writing to the union's secretary within 72 hours of the missed meeting (57 R. 10–13). As a consequence of these requirements, it was stipulated, only 11 members of the 500-member union were eligible to run for office in 1963 (57 R. 12). In the election the Vice-President and Financial Secretary ran for reelection unopposed (57 R. 17) and there were no candidates at all for Recording Secretary and for three Trustee positions; these positions were filled by the appointment of members who could not have qualified as candidates under the meeting-attendance requirement (57 R. 12).

This action was instituted after the Secretary had received and investigated a complaint from a union member, a nominee for the office of president of the local, who was disqualified as a candidate because he had attended only 17 of the 24 relevant monthly meetings (57 R. 13). The minutes of one of the seven meetings which he missed indicated that he had been hospitalized on the occasion of that meeting (57 R.

13). The union had failed to act on the member's internal complaint (57 R. 11–12).

The district court held that the 75-percent attendance requirement violated the "reasonable qualifications" provision of Section 401(e) because 75 percent was too high a percentage, the provision governing excuses was too limited and the effect of the rule too restrictive (57 R. 44–46). Notwithstanding this conclusion, the court denied the relief requested by the Secretary on the ground that the plaintiff had failed to establish that the violation "may have affected the outcome" of the election, as required by Section 402(c)(2), because there was evidence that the complaining member "voluntarily absented himself from meetings on occasions not justified by sickness or other unavoidable emergency, and thus his failure to qualify was not due to the existence of the unreasonable requirements of the By-Laws but to his own voluntary unwillingness to comply therewith" (57 R. 47). It therefore dismissed the complaint, although it "retain[ed] jurisdiction" for further action "in the event that the Secretary shall have found cause to file a complaint by reason of alleged violations of the Act of similar character in connection with the next regularly ensuing election of officers of defendant union" (57 R. 48). The Secretary appealed from the judgment of dismissal.

The union's next regular election was held in October 1965, and on the Secretary's motion the court of appeals remanded the case to the district court to take evidence concerning that election (57 R. 49). The

Secretary submitted an affidavit stating that the 75-percent attendance requirement had remained in effect during the 1965 election; that in consequence only 2.6 percent of the membership had been eligible to run for office; that only eight candidates ran for the eight union offices, with only one running for president and no candidates being nominated for three of the offices; that no members were nominated who were ineligible under the 75-percent rule; and that the rule was not waived on behalf of any nominee (57 R. 52–54). The district court denied the Secretary's motion to have the 1965 election declared invalid (57 R. 55).

On appeal by the Secretary, the court of appeals held that the Secretary's challenge to the 1963 election had been mooted by the 1965 election. The court relied on the decision of the Court of Appeals for the Second Circuit in *Wirtz* v. *Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers,* 366 F. 2d 438, and in particular on the following reasoning of the Second Circuit (366 F. 2d at 442):

> The exclusive remedy which Congress had created for challenging a union election, see 29 U.S.C. § 483, is a suit by the Secretary to declare the election void and to direct the conduct of a new election. * * *
>
> * * * It would serve no practical purpose with respect to these locals to declare their 1962 elections void because the terms of office thereby conferred have expired. And because Title IV does not permit the Secretary to seek either to enjoin future elections, or to declare

> a given candidacy requirement unlawful absent a valid complaint and an investigation of its application to a specific election * * * we conclude that we have no power to afford the Secretary relief and therefore that these cases are moot.

The court found it unnecessary to decide whether the trial court had been correct in ruling that the imposition of the unreasonable meeting-attendance qualification could not have affected the outcome of the 1963 election, but stated that it would not permit the decision to stand as a precedent on this contested issue and, therefore, directed that both the judgment and the post-judgment order be vacated (57 R. 69).

2. *No. 58.*—Respondent, a local union engaged in an industry affecting commerce as defined by the Labor-Management Reporting and Disclosure Act and therefore subject to the requirements of Title IV, held a general election of officers on June 8, 1963. The vote for the office of Business Representative was a tie. A run-off election for that post was held on July 13, 1963 (58 R. 92). Within one month after the run-off, the losing candidate in the run-off protested its conduct to the union, on the ground that members not in good standing had been permitted to vote, in violation of Section 401(e). He then filed a complaint with the Secretary of Labor repeating his protest (58 R. 92).

Respondent is governed by the Constitution and the Uniform Local Union Constitution of the Laborers' International Union of North America. Under the Uniform Local Union Constitution, membership dues

are payable on the first day of each month; unless they are paid on or before the last day of the following month, good standing is lost, and the member is automatically suspended without notice and with loss of all membership rights except the right to readmission upon payment of a fee (58 R. 37, 95). Readmitted members are considered new members from the date of readmission (*ibid.*). Candidates for office are required to have maintained continuous membership in good standing for a period of two years in the International and at least one year in the Local (58 R. 34, 107). Since any member whose dues are in arrears for more than two months is automatically suspended, such arrearage occurring within two years before the election makes a member ineligible to be a candidate.

The International Constitution requires respondent to remit to the International a per capita tax payment of $1.00 per member each month (58 R. 30, 96). These payments are to be made only for members who have in fact made current payment of their dues to the Local (58 R. 39, 98). However, during the calendar year 1962 and until July 1963, respondent's Secretary-Treasurer at times remitted per capita tax payments to the International from the general fund of the Local in behalf of individual members who had not made timely payment of their dues (58 R. 96–98). As a result, some 50 to 75 members appeared to be in good standing, on the basis of the per capita tax reports, although they had actually lost their good standing (58 R. 63, 96). During the same period, some 700 members who had fallen into arrears

in the payment of their dues were automatically suspended with loss of good standing in accordance with the Constitution (58 R. 101). The Secretary's investigation disclosed that 16 of the 27 candidates for office in the June 8, 1963, election, including several victorious candidates (among them the eventual winner of the run-off election) should have been ruled ineligible under the foregoing provisions and that approximately 50 of the members voting in the June 8, 1963, election, and approximately 60 members voting in the July 13 run-off election, should have been declared ineligible (58 R. 75–76).

By a letter dated January 27, 1964, the International and respondent Local were advised of these findings (58 R. 68). A conference between attorneys representing the Secretary and attorneys representing the International was held on February 4, 1964, to discuss the investigative findings (58 R. 75–76). When the representatives of the International declined to take any corrective action, the Secretary, on February 7, 1964, brought suit to declare both the general and run-off elections invalid and to direct a new election of officers under his supervision. The complaint alleged that the union had violated the Act by permitting ineligible members to vote and to run for office at both the general and run-off elections in 1963 (58 R. 3).

On the union's motion, the district court struck those portions of the complaint directed to the election of officers other than Business Representative because no complaint by a union member had challenged the general election of June 1963 (58 R. 15).

The Secretary later moved for summary judgment with respect to the remaining allegations of the complaint. The court, finding that at least 58 of the 379 members who voted in the run-off election of July 13, 1963, and two of the three candidates in that run-off election, had been ineligible under the union's constitution, granted the Secretary's motion and directed the conduct of a new election for the office of Business Representative under the Secretary's supervision (58 R. 107). Referring to its earlier ruling dismissing parts of the Secretary's complaint, the court found it unnecessary to decide whether the Secretary was entitled to challenge the run-off election on the basis of the ineligibility of two of the three candidates. Because of the imminence of respondent's next regular election, the court directed that the regular election for the office of Business Representative be held under the supervision of the Secretary and the successful candidate installed in office for a full constitutional term (58 R. 110).

The Secretary appealed from the order limiting relief to the office of Business Representative. On June 11, 1966, less than two months after the district court had rendered judgment, the union held its next regular election and, at the same time, a supervised election for the office of Business Representative pursuant to the court's order. The court of appeals, without reaching any other issues, thereupon dismissed the Secretary's appeal as moot, relying on the decision of the Court of Appeals for the Second Circuit in *Wirtz* v. *Local Unions 410, 410A, 410B &*

410C, International Union of Operating Engineers, supra.

SUMMARY OF ARGUMENT

Title IV of the Labor-Management Reporting and Disclosure Act of 1959 establishes certain standards for the conduct of union elections. The procedure for redressing violations of these requirements is as follows. First, a union member must complain to the union of an electoral violation. Should the union fail to make voluntary correction, the Secretary of Labor may bring an action in a federal district court. The court shall declare the election challenged by the Secretary void, and direct the holding of a new election under the Secretary's supervision, if it finds that a violation of Title IV occurred which may have affected the outcome of the election.

I

In each of the two cases at bar, the union held its next regularly scheduled election while the Secretary's appeal from an adverse decision of the district court was pending, whereupon the court of appeals dismissed the case as moot because, in its view, the Secretary was no longer entitled to an order directing a new election under his supervision. However, the provision requiring a supervised election upon finding a violation that may have affected the outcome of the challenged election is unqualified; the statute does not say, "unless the union has already held its next election," although it could have been anticipated that a second election would frequently overtake the Secretary's suit. Moreover, to imply such a limitation on

the scope of the relief available to the Secretary would defeat the basic policy of Title IV.

Briefly, that policy is to foster union democracy and representative union leadership. These goals would be thwarted if the holding of an unsupervised election terminated judicial power to order a supervised election. In the first place, there is no assurance that the union in the second election will abandon the violation that gave rise to the Secretary's challenge to the first. Where it does not—as happened in one of the cases at bar, No. 57—the result is that the violation will go entirely uncorrected unless a supervised election is ordered, since Congress gave the courts no power to enjoin violations of Title IV. In the second place, incumbent officers enjoy inherent advantages in obtaining re-election in an unsupervised election because they control the electoral machinery. Thus, if they were unlawfully elected, a supervised election (the procedures for which are specifically designed to minimize the advantages of the incumbents) is necessary in order to assure that the effects of the illegality do not persist.

To be sure, the result will sometimes be the nullification of an election that was not itself unlawful. But it is not uncommon for a judicial remedy to outlaw some lawful as well as unlawful acts where necessary to ensure complete and effective relief against a proven illegality. This result is far preferable to either enjoining the holding of another election pending the Secretary's suit attacking the first—which serves only to perpetuate the unlawfully elected incumbents in office beyond the expiration of their

term—or expediting the Secretary's suit—a device that will often be ineffective, due to the frequency of union elections, and sometimes positively harmful in its impact on the statutory policy and procedures of voluntary settlement of electoral violations.

II

In No. 58, the district court held that the Secretary of Labor could not challenge a general election for all officers because the complaining union member had specifically challenged only the conduct of the run-off election for the one office as to which the general election resulted in a tie vote. We believe that the Secretary was entitled to broaden the scope of the suit as he did. The Secretary's allegations were fairly within the scope of the internal complaint, which, limited as it was, placed the union on clear notice of the violations that had occurred at the general election. For any reasonably careful investigation of the run-off would have revealed that the same violation had occurred at the general election and had extended to all of the offices at stake.

Beyond this, we submit that the Secretary is entitled to challenge any violations that he has uncovered in the course of his investigation of the union member's complaint. The statutory language imposes no restriction on the scope of the complaint (save that it must relate to the election challenged by the complaining member, and for this purpose it seems plain that the run-off and the general election which preceded it should be viewed as a single election). The statutory goal of representative union leadership would be

undermined if the Secretary could not proceed against violations that his investigation of the internal complaint revealed merely because they were concealed from, or overlooked by, the complainant. Nor is the policy underlying the internal-complaint-and-exhaustion requirement—to afford the union an opportunity to correct any electoral violations voluntarily before the Secretary brings suit—offended by the principle we urge, since the Secretary notifies the union, in advance of suit, of any violation he discovers in the course of his investigation (whether or not they were alleged in the internal complaint), thus affording full opportunity for voluntary correction.

III

The district court in No. 57 held that a requirement that union members to be eligible to stand for office have attended 75 percent of the union's monthly meetings in the two years preceding the election was unreasonable and hence unlawful under Title IV, but refused to find that it "may have affected the outcome" of the election—the necessary predicate for relief. This was error. The purpose of requiring a showing that the violation may have affected the outcome of the election is to excuse trivial violations; but that, plainly, is not our situation. Here the unlawful practice resulted in disqualifying 97 percent of the union's membership from running in the union's elections. Nor can it be said that none of those wrongfully disqualified might have stood for office and won—thus affecting the outcome—especially when one of the disqualified members was an avowed candidate for a specific union office.

ARGUMENT

I. IN BOTH CASES, THE COURTS OF APPEALS ERRED IN HOLDING THAT AN ACTION BY THE SECRETARY OF LABOR TO DECLARE AN ELECTION VOID AND TO DIRECT A NEW ELECTION UNDER HIS SUPERVISION WAS MOOTED BY THE INTERVENTION OF THE UNION'S NEXT REGULARLY SCHEDULED ELECTION

Section 401 of the Labor-Management Reporting and Disclosure Act of 1959 declares unlawful certain abuses in union elections, such as imposing unreasonable candidacy requirements, and Section 402 empowers the Secretary of Labor, upon complaint by a union member after he has exhausted his internal union remedies, to bring an action in federal district court to redress such violations. The latter provision stipulates that, if the court finds that a violation occurred which "may have affected the outcome of an election," it "shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary * * *." In each of the cases at bar, the Secretary brought a suit under this provision challenging a union election and while his suit was pending on appeal the union held its next election. Both courts of appeals dismissed the appeals as moot by reason of the new election. The principal question presented is the correctness of this disposition.

A case becomes moot when the relief sought becomes futile, impossible or academic. *E.g., California* v. *San Pablo & Tulare R.R.*, 149 U.S. 308. Thus, a suit to replevy a specific article would be moot if, prior to judgment, the article was returned to the

plaintiff, or destroyed. These suits by the Secretary of Labor are moot if, by reason of the intervening elections, he is no longer entitled to orders directing new elections under his supervision even if he establishes that the previous elections are void.

The language of the Labor-Management Reporting and Disclosure Act lends no support to the view of the courts below that the intervening elections cut off the Secretary's right to the relief asked. The Secretary is entitled to such relief, under Section 402, when a violation has occurred "which may have affected the outcome of an election," and there is no provision equating "an election" with "the immediately preceding election." No such gloss was suggested in the debates preceding enactment. Nor is that result indicated to us when we look to the general purposes and overall design of the Act.

To be sure, if the Act were concerned to protect only the private right of a union member to run for a particular union office in a particular election, there might be some merit to the argument that, once the term of office to which the candidate aspired has been terminated by the election of new officers, he is no longer entitled to complain about the old election. But even the courts below did not adopt so narrow a view of the purposes of the Act. They conceded the Secretary's interest in the electoral process beyond the immediate term of office in issue by endorsing the Second Circuit's suggestion that the Secretary, to prevent his suit from becoming moot, may ask to enjoin the holding of a new election and thus to perpetuate the incumbents in office beyond their

prescribed term.[1] As we show presently (*infra,* pp. 17–19), the Act is intended to do more than protect a candidate's right to run in a particular election: the objective is to ensure a democratic electoral process. And that purpose, as we shall demonstrate (*infra,* pp. 19–38), requires that the courts be free to order a new election, supervised by the Secretary, notwithstanding that the union has held another election in the interim.

A. THE POLICY OF TITLE IV IS TO ENSURE FAIR AND DEMOCRATIC UNION ELECTIONS

The policy underlying Title IV is stated at the outset of the Act (29 U.S.C. 401):

> The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to * * * choose their own representatives.

Thus, although some of the bills before Congress would have permitted the complaining union member to sue in his own right (S. 748, 86th Cong., 1st Sess., 105 Cong. Rec. 1276; H.R. 8342, 86th Cong., 1st Sess., 105 Cong. Rec. 15887), the Act as finally passed provided that a suit by the Secretary of Labor was to be the exclusive post-election remedy. 29 U.S.C. 483. So providing, "Congress decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the *public*

[1] See *Wirtz* v. *Local Unions 410, Etc.*, 366 F. 2d 438; *Wirtz* v. *Local Unions Nos. 545, Etc.*, 366 F. 2d 435. We explain *infra*, p. 34, why the Second Circuit's suggestion does not provide a suitable means of implementing the Secretary's continuing interest in the union's electoral process.

interest." Calhoon v. *Harvey,* 379 U.S. 134, 140 (emphasis added). The focus is on the right of *all* the union members to be governed by officials who are "responsive to the desires of the men and women whom they represent." S. Rep. No. 187, 86th Cong., 1st Sess., p. 20; H. Rep. No. 741, 86th Cong., 1st Sess., p. 16. Of course, Congress also viewed Title IV as a means whereby losing or disqualified candidates could receive the assistance of the federal government in vindicating their rights (see 104 Cong. Rec. 10947 (remarks of Senator Kennedy); but this is not the sole office which Title IV performs.

One indication of the broader interest protected is that the Secretary's power to institute a suit under this title does not depend on complaint being made by a losing or disqualified candidate; the only prerequisite to suit is a complaint (after exhaustion of internal union remedies) by "a member" of the union (29 U.S.C. 482(a))—by any member (S. Rep. No. 187, 86th Cong., 1st Sess., p. 13) who feels aggrieved by the electoral result. The complaint-and-exhaustion requirement is designed primarily to preserve "a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections" (S. Rep. No. 187, 86th Cong., 1st Sess., p. 21), with a secondary purpose being to confine the Secretary's intervention to situations in which the electoral abuse is grave enough to move at least one member of the union to complain; and these objectives are completely consistent with the view that the basic purpose of Title IV is to ensure representative union leadership—to protect the

voter—rather than merely to advance the interests of aspirants for union office.

We next show that this purpose would often be thwarted unless the Secretary's right to relief survived a new election.

B. REPRESENTATIVE UNION LEADERSHIP CANNOT BE ASSURED IF THE HOLDING OF A NEW ELECTION BY THE UNION PRECLUDES THE IMPOSITION OF ANY SANCTION FOR A PREVIOUS UNLAWFUL ELECTION

Superficially, it might seem that the adverse effects on union democracy of an election whose outcome might have been affected by a violation of Section 401 would wash out when the union held its next election. In many instances, however, the taint of the original election infects the next and is curable only by the Secretary's "laboratory" election.

The facts of No. 57 illustrate this in striking fashion. On remand, the Secretary proved that at the union's second election in October 1965—the event the court of appeals later held mooted his action—the attendance requirement of the union's bylaws which had given rise to the suit was again used to disqualify candidates, despite the decision of the district court on August 26, 1965, holding this limitation unlawful. As a result of the requirement only 13 of 500 members were eligible to run for office at the 1965 election and only 8 candidates actually ran. Indeed, the union's electoral process was so distorted that there were no candidates at all for the three trustee offices, which the union's bylaws require be filled electively, and it became necessary for the president of the union to appoint the three incumbent trustees (as he had done

after the previous election in 1963) although they were ineligible under the attendance requirement to run for the office.

Thus the taint of the challenged election persisted in the succeeding one; the results of the latter were no more representative than that of the former. The second election made the statutory remedy of a laboratory election no less needful.[2] And that would be true

[2] Before the decision of the Court of Appeals for the Second Circuit in *Wirtz* v. *Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, supra*, the district courts had generally upheld the Secretary's right to file a supplemental complaint, without any renewal of the initiating procedures of internal protest, complaint to the Secretary, investigation, and finding of probable cause, when the alleged violations giving rise to a pending Title IV suit were repeated in a subsequent election. *Goldberg* v. *Trico Workers Union*, 53 L.R.R.M. 2875 (W.D.N.Y.); *Wirtz* v. *Local 559, United Brotherhood of Carpenters and Joiners*, 60 L.R.R.M. 2522 (W.D. Ky.); *Wirtz* v. *Research, Development and Technical Employees Union* (D. Mass., Civil Action No. 64–567–W, 1965); *Wirtz* v. *Local Union 825, 825A, 825B & 825C, International Union of Operating Engineers* (D. N.J., Civil Action No. 438–63, 1965); *Wirtz* v. *Local 84, Glass Bottle Blowers Association* (D. Kansas, Civil Action No. KC–2140, 1966). The procedure followed in these cases was consistent with the decisions of this Court in the closely analogous situation presented in National Labor Relations Board unfair labor practice proceedings. The Board, like the Secretary of Labor under Title IV of our Act, may act only upon receipt of a complaint, or a charge, from an aggrieved party. However, the Board is not precluded from "dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board." *National Licorice Co.* v. *Labor Board*, 309 U.S. 350, 369; *Labor Board* v. *Fant Milling Co.*, 360 U.S. 301, 306–307, 309. Similarly, here, the Secretary and the courts should be free to deal with violations related to those alleged in the complaint which take place during the pendency of the litigation,

even if the union had not actually applied its unlawful condition of candidacy, for there would have been no assurance, without a supervised election, that the union members had been adequately notified of the elimination of the unreasonable attendance requirement.[3] Certainly, the continuing need for a laboratory election exists when it is not known whether the violation giving rise to the Secretary's suit persisted into the second election.

Such is the case in No. 58. There is no evidence whether the violation was repeated in the unsupervised portion of the 1966 election.[4] But, in any event, the remedy of a laboratory election closely supervised and controlled by the Secretary is designed not merely to assure the discontinuance of the particular violation found—an objective that could as well be achieved by empowering the court to enjoin violations (see *infra,* pp. 34–37). Of equal importance, the laboratory election serves—more effectively than alternative devices—to neutralize the inherent advantages of the

[3] One of the procedures which the Secretary follows at supervised elections is to hold a pre-election conference, open to the membership, at which ground rules for the election are adopted.

[4] The Department of Labor advises us that its representatives who supervised the election for Business Representative were not in a position to determine whether ineligible members either ran for office or voted at the election for the other offices. Although the supervised and unsupervised elections took place at the same time and in the same hall, separate ballots and separate ballot boxes were used, and there were two separate lines of voters. Thus, so far as the Department knows, persons ruled ineligible to vote at the supervised election could have voted at the unsupervised election, and persons ineligible to run at the supervised election could have run at the unsupervised election.

unlawfully elected incumbents in perpetuating their office in subsequent elections through control of the electoral machinery, using techniques which are not demonstrably unlawful but which nonetheless favor incumbents. Unless a supervised election is conducted to break this cycle of control a single invalid election may taint several which follow it.

The procedural standards for elections which the 1959 Act and most union constitutions and bylaws establish leave to those administering the elections considerable room for maneuver. To be sure, the Act contains specific provisions for ensuring equality of treatment with respect to mailing of campaign literature; requires "adequate safeguards to insure a fair election" including the right of any candidate to have observers at the polls and at the counting of ballots; and guarantees "reasonable opportunity" for the nomination of candidates, the right to vote without fear of reprisal, and the right of every member in good standing to be a candidate, subject to "reasonable qualifications uniformly imposed." 29 U.S.C. 481 (c), (e). Nevertheless, when the incumbent officers control the details of the election process, they are in a position to make decisions regarding election procedure which favor the incumbent slate yet cannot be shown, in a post-election suit, to have been illegal or, if illegal, to have been sufficiently important to the outcome to justify setting aside the election. As one distinguished student of the subject has remarked (Summers, *Judicial Regulation of Union Elections,* 70 Yale L.J. 1221, 1228–1229 (1961)):

> The problem of maintaining equality in a contested election is aggravated by the fact that control of the process is commonly in the hands of one of the competing factions. The lack of any established two-party system in most unions hinders the development of devices for sharing control between the opposing groups. * * *
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> Normally union officers control the election process. They call and preside at the nomination meeting, rule on the qualifications of candidates, design the ballot, fix the time and place of the election, and rule on the qualifications of voters. Many of these functions may be vested in an election committee, but * * * the administration group often dominates this committee. Although those in control are governed by the union constitution, its sketchy provisions leave substantial room to maneuver for critical advantages.

These dangers were known to the framers of Title IV, enacted as it was against the background of an extensive congressional inquiry which revealed how some union officials had been able to perpetuate their control of union office. See *Interim Report of the Select Committee on Improper Activities in the Labor or Management Field,* S. Rep. No. 1417, 85th Cong., 2d Sess. Congress was aware that incumbent union officers enjoy considerable advantages in seeking reelection and that undemocratic procedures followed in one election can have a continuing impact on the outcome of subsequent elections. Provision was made for a supervised election to break the cycle. The Secretary was authorized to establish procedures for the supervised election which are designed not only to en-

sure that the election is conducted in a lawful manner under the union's constitution and bylaws [5] but also to deny the incumbent officers any opportunity to favor the administration slate in making decisions—and he has done so.[6]

In sum, in regular, unsupervised elections the union itself determines the details of election procedures, because Congress wished only to prescribe minimum standards of fair procedure for union elections, believing that unions generally could be trusted with responsibility to work out the details of their own internal procedures in a fair manner. S. Rep. No. 187, 86th Cong., 1st Sess., p. 7. But once the Secretary has shown that a union has committed a violation of the Act which may have affected the outcome of an election, that trust is forfeited and it becomes

[5] The supervised election must be held, "so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization." 29 U.S.C. 482(c). However, subject to that limitation, the Secretary is authorized to prescribe rules and regulations for the conduct of supervised elections. 29 U.S.C. 482(b).

[6] This is done principally by ensuring that incumbent officers do not control the election committee or otherwise decide the details of the election procedure. Thus, at a supervised election, the principal details are determined by the Department of Labor's supervisor in consultation with all interested parties at a pre-election conference. Matters remaining unsettled after the pre-election conference may be left to a union election committee, but incumbent officers seeking re-election, as well as other candidates for office, are not permitted to serve on the election committee. Where the union's constitution requires incumbent officers to perform functions in connection with the election, the incumbent seeking re-election must perform these functions under supervision and, upon request, under the observation of representatives of rival candidates.

necessary for the Secretary to control the details of the election procedure through supervision of a court-ordered election. The violation destroys the presumption of regularity that would otherwise attach to the union's conduct of its own election; the intervention of an unsupervised election is not sufficient to restore it. Even if it cannot be shown in a post-election investigation that the intervening election was conducted in violation of the Act, there can be no assurance that the unlawfully elected incumbents forewent the opportunities for manipulation that an unsupervised election permits. A laboratory election remains necessary to assure that the control achieved by violating the Act in the first election is not perpetuated by subtle means in the second.[7]

[7] The continuing public interest in the Title IV remedy, once suit has been validly initiated, was forcefully expressed by the court in *Goldberg* v. *Amalgamated Local Union No. 355*, 202 F. Supp. 844 (E.D.N.Y.), where the Secretary had filed suit to compel the holding of a local union election after the lapse of more than three years since the last election. After the suit was filed, the union held an unsupervised election. The court refused to dismiss the complaint, saying:

> The filing of the complaint under the procedure outlined by Congress sets in operation the governmental machinery. To that point, the LMRDA gives the labor organization the opportunity to correct and remedy the violations. Beyond that point, the right of the government to investigate the breakdown of the democratic processes is clear. It is not within the power of the labor union to deprive the government of its right by compliance. The interest of the public goes beyond adherence to the form. The interest of the public has been called into play by the failure of the union to act. The substantial right of the Secretary cannot be capriciously brushed aside. [202 F. Supp. at 846.]

So saying, we suggest no novel principles. It is familiar law that the discontinuance of the particular practice challenged does not defeat the government's right to relief against a violation of law, unless it is clear that a decree is unnecessary to protect the public against the consequences of the violation.[8] This is such a case. Full protection of the public interest is not assured by the mere fact that a subsequent election is conducted, even if the challenged practice appears to have been abandoned.

Also relevant is the principle that when important rights have been violated the remedy may go beyond restraining the plainly unlawful conduct and prohibit associated acts which would be permissible at the hands of others, or even the defendant, had they not been used to perpetrate the wrong. *E.g., United States* v. *Bausch & Lomb Co.*, 321 U.S. 707, 724; *May Department Stores Co.* v. *Labor Board*, 326 U.S. 376, 391; *Swift & Co.* v. *United States*, 276 U.S. 311. The effect of the relief asked by the Secretary in these

[8] See, *e.g.*, *Labor Board* v. *Jones & Laughlin Steel Corp.*, 331 U.S. 416; *Local 74, Etc.* v. *Labor Board*, 341 U.S. 707; *Porter* v. *Lee*, 328 U.S. 246; *Walling* v. *Helmerich & Payne*, 323 U.S. 37; *Walling* v. *Reuter Co.*, 321 U.S. 671; *Federal Trade Commission* v. *Goodyear Co.*, 304 U.S. 257; *Labor Board* v. *Pennsylvania Greyhound Lines*, 303 U.S. 261; *Southern Pac. Terminal Co.* v. *Interstate Commerce Commission*, 219 U.S. 498; *United States* v. *Trans-Missouri Freight Assn.*, 166 U.S. 290; *Mitchell* v. *Southwest Engineering Co.*, 271 F. 2d 427 (C.A. 8); *Marlene's Inc.* v. *Federal Trade Commission*, 216 F. 2d 556 (C.A. 7); *Walling* v. *Mutual Wholesale Food & Supply Co.*, 141 F. 2d 331 (C.A. 8); *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307 (C.A. 7); *Goldberg* v. *Amalgamated Local Union No. 355*, 202 F. Supp. 844 (E.D.N.Y.); *United States* v. *Bates Valve Bag Corp.*, 39 F. 2d 162 (D. Del.).

cases may be to undo elections not themselves shown to be illegal, but that is necessary to assure the complete extirpation of proven wrongful conduct. Under the Voting Rights Act of 1965, a State may not enforce a literacy test, even a lawful one, if such a test was used at any time during the previous five years to abridge the right to vote on account of race or color. "Congress knew that continuance of the tests and devices in use at the present time, no matter how fairly administered in the future, would freeze the effect of past discrimination in favor of unqualified white registrants." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 334. And both the registration and the voting process in areas where persistent violations have occurred are subject to detailed federal supervision. See 42 U.S.C. 1973 *et seq.* Here, too, something more than the abandonment of an unlawful practice is required to overcome the effects of past illegality and restore democracy.

It remains only to consider whether, within the framework of Title IV, there is any adequate alternative remedy for assuring that the taint of an unlawful election is thoroughly dissipated, other than directing a laboratory election notwithstanding an intervening unsupervised election.

C. THERE IS NO OTHER EFFECTIVE REMEDY UNDER TITLE IV TO ASSURE THE ELIMINATION OF THE ADVERSE EFFECTS OF AN UNLAWFUL ELECTION

We canvass here the possible alternative methods of guaranteeing representative union leadership in a situation where the union holds another election following the unlawful one—alternatives to the Secre-

tary's preferred remedy of an order in the suit challenging the first election directing that a new election be conducted under his supervision, without regard to the fact that the union has already held its next election.

1. Expedited proceedings

It is readily apparent that, in the ordinary course, a suit by the Secretary to declare an election void and obtain an order directing a laboratory election will more often than not be overtaken by the union's next election before it is prosecuted to its conclusion—as happened in the cases at bar. The Act itself requires unions to hold elections at least once every three years (29 U.S.C. 481(b)); many unions (including the local involved in No. 57) hold elections biennially; and some even conduct annual elections.[9] The Secretary cannot, under normal circumstances, institute an action in the district court until at least six months after an election,[10] and in most cases a trial is necessary since the issues—what procedures were followed, whether a particular practice was unreasonable in the

[9] At least 3.5 million local union members elect their officers at intervals of two years or less. United States Department of Labor, *Union Constitutions and the Election of Local Union Officers* (1965), Table 5, p. 22.

[10] First, a member must complain to the union. The union then has three months to render a final decision, and the union member one month after that to file a complaint with the Secretary. 29 U.S.C. 482(a). Sometimes the member awaits the union's final decision, which may take considerably more than the statutory minimum of three months, before filing a complaint. The Secretary then has sixty days to conduct the administrative investigation that is required before the suit may be brought. 29 U.S.C. 482(b).

circumstances, and whether violation, if established, may have affected the outcome of the election—usually involve disputed questions of fact. Thus, many times even the district court's judgment may be delayed until the next regular election. The danger is likely to be aggravated if unions know that to moot these suits they need only delay the proceedings until their next election.

If appeals are taken, it becomes virtually impossible to terminate the litigation (including action on an application for review by this Court) before the next biennial or triennial union election. To be sure, this holds true only if the district court refuses to order a supervised election and the Secretary appeals; Section 402(d) of the Act bars a stay pending appeal of a district court order directing a supervised election. However, as these cases illustrate, it is not uncommon for district courts to refuse the Secretary the relief he asks, and it seems hardly reasonable to suppose that Congress intended no judicial review of lower court rulings sharply curtailing the scope and efficacy of Title IV.[11]

The vital importance to the effective and orderly administration of Title IV of permitting the Secretary to obtain appellate review is well illustrated by the two cases at bar. No. 57 involves the nature of the

[11] As a matter of fact, it is clear that Congress contemplated judicial review of election orders—which the mootness holdings of the court below hobbles. Compare Section 402(d) of the final Act, which expressly makes election orders appealable, with earlier bills providing that orders directing an election not be appealable (S. 3974, 85th Cong., 2d Sess., 104 Cong. Rec. 18263, and S. 3751, 85th Cong., 2d Sess.).

burden of proof resting on the Secretary to show that a violation of the Act "may have affected the outcome of an election."[12] Since the Secretary will not institute court proceedings unless he believes that the burden can be satisfied,[13] the resolution of the question presented will shape the course of future investigations, and will in some instances control the decision whether suit should be filed. So, also, the question in No. 58, concerning the proper scope of the Secretary's complaint, has obvious practical importance for the whole Title IV enforcement program. Before the order dismissing portions of the complaint in this case, the Secretary had successfully maintained in the district courts his view that a valid complaint from a union member opens to investigation and judicial challenge the whole electoral process.[14] Since that de-

[12] The same ruling has been reached more recently, on only slightly different facts, in *Wirtz* v. *Local 66, Glass Bottle Blowers Association*, 268 F. Supp. 33 (W.D. Pa.), June 1, 1967, which involves the same meeting attendance requirement. Since Local 66 is scheduled to hold its next regular election in September 1967, it is highly unlikely that an appeal can be completed in time under the Third Circuit's mootness holding.

[13] The Interpretative Bulletin issued under the Act states (at 29 C.F.R. § 452.16(b)): "Violations of the election provisions of the Act which occurred in the conduct of elections held within the prescribed time are not grounds for setting aside an election unless they 'may have affected the outcome.' The Secretary, therefore, will not institute court proceedings upon the basis of a complaint alleging such violations unless he finds probable cause to believe that they 'may have affected the outcome of an election.'"

[14] Decisions favorable to the Secretary on this question had been rendered without opinion in *Wirtz* v. *Local 11, Hod Carriers* (ruling specifically referred to in 211 F. Supp. 408, at 412 (W.D. Pa.)); *Wirtz* v. *Local 611, International Hod Carriers' Union*, Civil No. 9512, D. Conn., motion for summary

cision, numerous Title IV defendants have raised the defense that the complaint went beyond the scope of the complaining member's internal protest.[15] If the Secretary's view of his duty and authority under Title IV is correct, then he should not be required to litigate this question repeatedly. On the other hand, if the decision of the district court in this case was correct, then the Secretary should not be wasting his resources by full investigation of election complaints followed by comprehensive litigation based on his investigative findings.

While efforts at expedition might alleviate the problem to some extent, it is obvious that even expedited proceedings frequently cannot terminate a litigation involving both trial and appeals, as No. 58 illustrates. Had the Secretary sought leave to pursue an interlocutory appeal from the order dismissing portions of the complaint, it is doubtful whether even a district court decision could have been rendered on the merits before the union's next election. Moreover, the courts can expedite only the judicial, and not the anterior administrative, proceeding. That limitation aside, undue haste in the processing of election complaints at the administrative level could actually un-

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judgment denied July 15, 1963; and *Goldberg* v. *District Council 21, Brotherhood of Painters*, Civil No. 30371, E.D. Pa., motion to dismiss denied March 31, 1962.

[15] See *Local Unions Nos. 545, 545-A, 545-B, & 545-C, International Union of Operating Engineers* v. *Wirtz*, C.A. 2, No. 499, decided July 28, 1967; *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, C.A. 2, No. 513, decided July 28, 1967; *Wirtz* v. *Local 9, etc., Operating Engineers*, 366 F. 2d 911 (C.A. 10), certiorari granted and decision vacated, May 15, 1967 (see p. 39, n. 22, *infra*) which followed the narrow view of the instant case.

ermine the policies of Title IV. The Secretary may ot bring suit unless and until the union has failed oluntarily to comply with the law. This requirement, s this Court pointed out in *Calhoon* v. *Harvey*, 379 .S. 134, 140, "is in harmony with the general con- ressional policy to allow unions great latitude in esolving their own internal controversies, and, where hat fails, to utilize the agencies of Government most amiliar with union problems to aid in bringing about settlement through discussion before resort to the ourts." [16] Since settlement efforts frequently take ime, the Secretary often obtains waivers in order to ermit the negotiations to extend past the sixty-day eriod allowed by the Act for bringing suit.[17] Fear of hootness, however, may induce the Secretary to file uit as quickly as possible, regardless of the effect on ettlement efforts,[18] while at the same time it may en-

[16] In fiscal years 1963, 1964 and 1965, an average of 124 com- laints per year were received by the Secretary, and an average f 17 complaints were filed in court. See Bureau of Labor- Management Reports, *Summary of Operations, 1963*, pp. 8, 11; U.S. Department of Labor, *Summary of Operations, 1964, Labor-Management Reporting and Disclosure Act*, p. 6; U.S. Department of Labor, *1965 Summary of Operations, Labor-Management Reporting and Disclosure Act*, p. 7.

[17] In some cases, the holding of a supervised election is pro- vided for by the settlement. Considerable time must be taken in preparing for the supervised election, during which interval the Secretary preserves his right to file a complaint by obtaining waivers of the limitations defense.

[18] To be sure, settlement negotiations may continue after the iling of a suit. However, the commencement of litigation gen- rally stiffens the position of the parties and makes settlement nore difficult. For example, before suit is filed the union may e amenable to settlement because it wishes to avoid the adverse ublicity of a lawsuit, but this factor, of course, disappears nce the suit is filed.

courage the union to engage in protracted negotiations so as to frustrate judicial enforcement should agreement not be reached. Either way a climate of voluntary compliance is impaired.

2. A new suit challenging the second election

This alternative may be quickly dismissed. Such a suit would be just as likely as the first suit to be overtaken—and hence, under the rule of the courts below, mooted—by the union's next election. And it would be no remedy at all in cases (like No. 58) where the vice of the second election lies, not in the fact that the union continues to impose the restriction challenged in the first suit, but in the danger that the officers elected unlawfully in the first election may have been able to perpetuate their office in the second through their control of the electoral machinery, without, however, committing any demonstrable violation of law.

Nor is the futile remedy of a second suit mandated by the complaint-and-exhaustion requirement of the Act. Where, as in No. 57, the union has already refused to change its candidacy qualifications, there would be little point in requiring a union member again to file an internal complaint and exhaust internal remedies. Moreover, a member of Local 153 who could not meet the attendance requirement in 1965 would not be likely to renew his attempt to run for office and then pursue an internal complaint if disqualified, knowing that the previous attack on the attendance requirement at the 1963 election had failed. If, as in No. 58, the second election is not provably

marred by a violation of Title IV, the member would have no basis in the Act for filing any new complaint.

3. An injunction against the holding of another election pending completion of the Secretary's suit

The Second Circuit has suggested that the Secretary might obtain, *pendente lite,* a stay of an election that would moot his Title IV action (see pp. 16–17 and n. 1, *supra*). This remedy, which has no foundation in the Act, seems completely anomalous. It places the Secretary in the untenable position of asking the court to maintain in office, beyond the expiration of their terms, the very union officials whose election he is challenging as unlawful. It unwarrantedly interferes with the union's rules prescribing the intervals at which elections should be held in disregard of the congressional policy of minimum interference in union electoral affairs (*supra,* p. 18). In some cases it may even conflict with the Act's explicit directive that union elections be held no less often than every three years. And it is inconsistent with at least the spirit of Section 402(d). That provision precludes a stay pending appeal of an order directing a supervised election, thus indicating, we think, that Congress did not intend that elections should be delayed owing to the pendency of Title IV litigation.

4. An injunction against the practice found to violate the Act

Arguably, the Secretary should be free to challenge not only the election itself, but the unlawful electoral practice, and to obtain an injunction against the continuation of the practice in any future election. However, in many cases this remedy would be wholly

inadequate. It would do nothing to prevent unlawfully elected officers from perpetuating their office by control of the electoral machinery—only a laboratory election is calculated to eliminate this harmful effect of an unlawful election. Beyond this, it is very doubtful that the Act empowers the courts to afford such injunctive relief, at least in the kind of case involved here. *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6,* C.A. 2, No. 513, decided July 28, 1967.

Title IV does not expressly provide for injunctive relief. The only remedy specifically provided in the statute is an order setting aside the challenged election and directing a supervised election. While the absence of express provision for injunctive relief is not, of course, conclusive (cf. *United States* v. *Republic Steel Corp.,* 362 U.S. 482), there is evidence that the omission here was deliberate.

For one thing, the enforcement provisions of other titles of the Act provide specifically for injunctive relief. Sections 102, 210, 304, 29 U.S.C. 412, 440, 464. Particularly relevant here is the enforcement section of Title III (Trusteeships), which permits the Secretary to obtain "such relief (including injunctions) as may be appropriate." 29 U.S.C. 464. Title III is otherwise quite similar to Title IV in its enforcement provisions. It provides (29 U.S.C. 464) for complaint by a union member, investigation of the complaint by the Secretary, a finding of probable cause by the Secretary to believe there has been a violation, and then a civil action by him. It seems unlikely that the omission from Title IV of the provision for injunctive relief found in Title III was completely inadvertent.

Moreover, several of the bills rejected by the Congress would have expressly authorized injunctions against future violations of the election provisions. The principal House bills—including the version that passed the House—provided for a civil action "to prevent and restrain such violation [of section 401]." H.R. 8342, 86th Cong., 1st Sess., Section 402(a), 105 Cong. Rec. 15707–15708, 15887; H.R. 8400, 86th Cong., 1st Sess. Both the administration's Senate bill and Senator McClellan's bill also provide for injunctions. S. 748, 86th Cong., 1st Sess., Section 302(d), 105 Cong. Rec. 1277; S. 1137, 86th Cong., 1st Sess., Section 403(a), 105 Cong. Rec. 2666. Nevertheless, the final Act did not provide injunctive relief for violations of Title IV.

Perhaps, in some extraordinary cases, a remedy not expressly provided in Title IV should be implied to achieve the overall congressional purposes. Thus, for example, when a union held a new election under the Secretary's supervision but refused to install the officers elected, suit was filed to compel their installation.[19] When ballots were altered before a recount to change the result of an election, the Secretary filed suit for the installation of the candidate who had received the most votes.[20] In these cases, since the elec-

[19] *Wirtz* v. *Local 85, Laborers' International Union*, D. Ore., Civil Action No. 66–221. After a pre-trial hearing, the union agreed to install the officers elected in the supervised election.

[20] *Wirtz* v. *Local 36, United Automobile Workers*, E.D. Mich., S. Div., Civil Action No. 27901. The case was eventually settled by installation of the properly elected candidate. The problem in that case was similar to one that occurred in the election of the national president of the International Union

tion itself was not tainted by illegality, to have directed a re-run would needlessly have interfered with the union's electoral process, contrary to the congressional scheme. Therefore, it was urged that a proper order would be one limited to the invalid portion of the election, *i.e.*, the installation of officers.[21] And in *Wirtz* v. *Local 1752, ILA,* 56 L.R.R.M. 2303, 2306 (S.D. Miss.), the court enjoined the union from post-election discrimination against the member who had filed a Section 402 complaint, noting that "the Secretary of Labor's enforcement responsibilities would be thwarted and the public interest harmed" if a complainant could not be protected from such reprisal.

Clearly, however, the usual statutory remedy for an illegal election—and, as mentioned, in many cases the only effective one—is a laboratory election; and in the present cases, such relief is appropriate and should be deemed available.

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of Electrical, Radio and Machine Workers in 1964. An investigation by the Secretary of Labor disclosed that the ballots had been miscounted. The candidate who had erroneously been declared elected resigned, and his opponent was installed in office. See U.S. Department of Labor, *1965 Summary of Operations, Labor-Management Reporting and Disclosure Act*, pp. 7–8; 88 *Monthly Labor Review* 562–565 (1965).

[21] But in *Wirtz* v. *Teamsters Industrial and Allied Employees Union, Local No. 73*, 257 F. Supp. 784 (N.D. Ohio) the court denied a motion to dismiss a complaint alleging, *inter alia*, that certain newly-elected officers had been improperly coerced into resigning immediately following their installation. There, an adaptation of the statutory remedy would have been unavailable, since the alleged violation occurred after the election was over. (The case was settled.)

In sum, within the framework of Title IV, effective relief against unlawful elections will in many cases be impossible unless the Secretary's right to an order directing a supervised election is recognized, whether or not the union has held another election since the one challenged in the Secretary's suit. In the circumstances, the Court would be fully justified in fashioning a remedy appropriate to carry out the statutory purpose. Compare *United States* v. *Republic Steel Corp.*, 362 U.S. 482; *Texas & N.O.R. Co.* v. *Ry. Clerks,* 281 U.S. 548. But no creative effort is required here. Nothing in Title IV makes an intervening union election a bar to an order directing a laboratory election if the previous election was voidable. We plead only for a liberal application of the statute, faithful to its true purpose.

II. IN NO. 58, THE DISTRICT COURT ERRED IN HOLDING THAT THE SECRETARY IN HIS SUIT MAY NOT CHALLENGE THE GENERAL ELECTION IN WHICH THE VIOLATION COMPLAINED OF OCCURRED, OR CHALLENGE THE ELECTION OF OTHER OFFICERS, BECAUSE THE UNION MEMBER SPECIFICALLY CHALLENGED THE VIOLATION ONLY AS IT AFFECTED THE RUN-OFF ELECTION HELD WITH RESPECT TO A SINGLE OFFICE FOR WHICH THE COMPLAINANT WAS A CANDIDATE

In dismissing the appeals in these two cases as moot, neither court of appeals considered whether the district court had been correct in its ruling on the merits of the Secretary's complaint. If this Court agrees with us that the appeals are not moot, it could of course remand the cases to the courts below to consider the merits of the appeals. On the other hand,

it would not be inappropriate to now resolve the important questions involved (which we discuss in this and the following part of our argument). The issue in No. 58 especially—whether the Secretary's suit may raise issues not specifically presented in the internal complaint—is closely related, as will appear, to the mootness question; and it has been fully considered by two courts of appeals already.[22] Moreover, both questions are extremely important to the administration of Title IV and should be decided promptly in order to provide guidance in the mounting litigation under the Act.

We begin with No. 58. The issue presented by the Secretary on his appeal was whether the district court erred in striking those portions of the Secretary's complaint directed to the conduct of the general election on June 8, 1961, and concomitantly, in limiting the supervised election to a single office, that of Business Representative.[23]

The complaint to the union specifically questioned only the run-off election held on July 13, 1963, for the

[22] See cases cited *supra*, p. 31, n. 15. Our petition for a writ of certiorari to review the decision in *Wirtz* v. *Local Unions Nos. 9, 9–A and 9–B, International Union of Operating Engineers*, 366 F. 2d 911 (C.A. 10), presented this question, but shortly thereafter, the respondent agreed to allow the Secretary to supervise the election of all officers, rather than only that involving the office with respect to which an administrative complaint had been filed. Accordingly, at the joint suggestion of the parties, the Court, on May 15, 1967, vacated the judgment below and ordered the suit dismissed as moot.

[23] The run-off election challenged in the union member's complaint involved only that office since it was the only one as to which the general election had resulted in a tie, requiring a run-off.

office of Business Representative. The complaint charged that that election had violated Title IV in that some members ineligible to vote because of non-payment of dues had been allowed to vote while others ineligible on that ground had been prevented from voting. The court directed a supervised election limited to a re-run of the run-off election for this post. Despite the Secretary's allegation that the same violation had occurred at the preceding general election, held on June 8, 1963, and had tainted the races for all offices, the court did not permit the Secretary to challenge the validity of the general election. In our view this was error.

A. THE ADDITIONAL ISSUES RAISED IN THE SECRETARY'S COMPLAINT WERE FAIRLY WITHIN THE SCOPE OF THE UNION MEMBER'S COMPLAINT TO THE UNION

Title IV, as already noted, provides that before filing suit the Secretary of Labor must receive a complaint from a union member who either exhausted his internal remedies within the union or invoked such remedies without obtaining a final decision within three months. 29 U.S.C. 482 (a), (b). Although the language of the statute is not entirely unambiguous, it appears that the Secretary's suit may only question the election that was the subject of the union member's internal complaint.[24] Since both the general election

[24] Section 402(a), 29 U.S.C. 482(a), provides that the "challenged election [referring to the election challenged by the union member in his complaint to the Secretary] shall be presumed valid pending a final decision thereon (as hereinafter provided) * * *." The statute goes on to authorize a suit by the Secretary "to set aside the invalid election * * *." 29 U.S.C. 482(b). The court is directed, if it finds that a violation may

held on June 8, 1963, and the run-off held on July 13, 1963, were part of a single process designed to select the officers of the union for the following three years, we view both together as constituting a single "election" for purposes of the statute.[25]

This common sense result is strongly suggested by the scheme of the Act. Title IV provides the exclusive remedy "for challenging an election already conducted" (Section 403) and it permits a protest and court challenge only after the election has been completed. See *Wirtz* v. *Local 30, International Union of Operating Engineers,* 242 F. Supp. 631, 633 (S.D.N.Y.) (citing this Court's decision in *Calhoon* v. *Harvey,* 379 U.S. 134); *Wirtz* v. *Great Lakes District Local 47, Masters, Mates & Pilots,* 61 L.R.R.M. 2010 (N.D. Ohio). An election that requires a run-off has not been completed. Moreover, Section 402(c) provides for judicial relief only if it is shown that a violation of the Act "may have affected the outcome of an election." Obviously, the outcome of an election which necessitates a run-off cannot be known until the completion of the run-off. Yet if the run-off in a case like No. 58 were viewed as a separate election, the complainant would have to lodge his internal union protest prematurely—before the run-off was held—since more than the 30-day period provided in respondent's constitution for the filing of election

have affected the outcome of "an election," to declare "the election" void and direct the conduct of a new election under the supervision of the Secretary. 29 U.S.C. 482(c).

[25] Webster's *Third International Dictionary* defines "election" as "the act or process of choosing a person for office, position, or membership by voting."

protests elapsed between the general election and the run-off.[26]

Defining "election" in this manner is fully consistent with the internal exhaustion requirement of Title IV, which was designed to preserve "a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." S. Rep. No. 187, 86th Cong., 1st Sess., p. 21; see *supra*, p. 18. When the international union received a complaint that the local had been following a practice which resulted in improperly qualifying certain members to vote, the international should have realized that the same practice had probably been followed in the general election which preceded, and necessitated, the run-off. And any serious investigation of the complaint would have shown that the Secretary Treasurer's practice of subsidizing the eligibility of some union members was enforced, not only at the run-off election, but also at the general election, held only six weeks previously. Thus, the policy of the exhaustion requirement—giving the union a chance to clean its own house—is served by permitting the Secretary to sue in respect of the general election on the basis of a complaint about the conduct of the run-off.

[26] We do not mean to imply that a run-off cannot be separately considered for any purpose under Title IV. If purely procedural irregularities are involved (*e.g.*, denial of a secret ballot, or failure to give the 15-day statutory notice), then the run-off may be the only defective part of the election, and the only part which requires corrective action. However, in the present case, the violations infecting the run-off were merely the continuation of the violations permeating the general election, and attributable to the same cause.

Once it is acknowledged that the run-off election was an integral and inseparable part of the general election which necessitated it, then the question arises whether the Act's internal-exhaustion requirement provides any justification for restricting the Secretary's suit to the particular office concerning which complaint was made. We submit that the purpose of the exhaustion requirement is not undermined by permitting the Secretary to question the election for other offices besides the one specified in the internal complaint, particularly where, as here, the same violations were alleged with respect to those other offices. The international cannot complain, in these circumstances, that it was deprived of an opportunity for voluntary correction by being confronted with the violation for the first time in the Secretary's suit. The illegality was fully disclosed by the internal complaint, albeit it focused only on a single union office.

There might be merit in the argument that the Secretary's suit is limited to the office as to which an internal complaint was made—despite the fact that the violation specified in the complaint affected other offices—if the Secretary's sole function in Title IV litigation were to vindicate the rights of a disappointed candidate. On this theory, since the complaining member in No. 58 asserted only his interest in running for the office of Business Representative, the Secretary's suit on his behalf should be similarly limited. However, as already explained (*supra*, pp. 17–19), the Secretary has a broader role in Title IV litigation: to represent the interest of all the members of the union in having officers responsive to their

needs and to assert the public interest in democratic labor unions. As this Court noted in *Calhoon* v. *Harvey*, 379 U.S. 134, 140, "Congress decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest." The "special knowledge" of the Secretary would be poorly utilized if he could function under Title IV only as the champion of a particular complainant.

B. EVEN UNRELATED VIOLATIONS, DISCOVERED IN THE COURSE OF THE SECRETARY'S INVESTIGATION OF A UNION MEMBER'S COMPLAINT, MAY BE RAISED IN THE SECRETARY'S ACTION

While we have suggested that the question of judicial power to remedy the additional violations challenged by the Secretary in his suit in No. 58 may be decided on the ground that they were within the scope of the internal complaint, an alternative ground of decision suggests itself—one that we believe superior from the standpoint of statutory policy and sound administration. We deem it neither appropriate nor necessary to the scheme of Title IV that the Secretary be precluded from invoking the aid of the courts to correct any violation that he discovers in the course of investigating a union member's complaint. Moreover, we think the trial of election cases should not be burdened with difficult collateral questions as to whether a particular violation may properly be considered comprehended within the allegations of the internal complaint. Here, an affirmative answer to the question is readily forthcoming, but in other cases it will be more difficult and we do not believe that

the terms or policies of Title IV requires the court to indulge that debate.

The language of the statute itself imposes no restrictions on the scope of the Secretary's suit. Indeed, it does not even explicitly require that the suit challenge the particular violation specified in the union member's internal complaint; the Secretary is empowered to bring suit if, after investigating the complaint, "he finds probable cause to believe that *a* violation of this subchapter has occurred." 29 U.S.C. 482(b) (emphasis added). This general language was not inadvertent. One of the bills considered by Congress provided that when a member complained to the Secretary of a violation of the Act, the Secretary was to investigate "such allegation," and bring an action only if he found "probable cause to believe that such allegation is true" (S. 1002, 86th Cong., 1st Sess., 105 Cong. Rec. 2067). The Conference Committee adopted the broader view, reflected in the Senate Report, that the Secretary was "to investigate the complaint and determine whether there is probable cause to believe that an election was not held in conformity with the requirements of the bill." (S. Rep. No. 187, 86th Cong., 1st Sess., p. 21.)

Congress provided a sixty-day period for the investigation of election complaints and gave the Secretary sweeping investigative powers. These powers are far more extensive than those which would have been available to an individual union member under the private enforcement scheme of the House bills (see *Wirtz* v. *Local 191, Teamsters,* 321 F. 2d 445 (C.A. 2); *Local 57, International Union of Operat-*

ing Engineers v. *Wirtz*, 346 F. 2d 552 (C.A. 1)), and would be unnecessary if the Secretary's responsibility were merely to verify the allegations of an individual member's protest. Congress could not have intended so to restrict the Secretary when it must have been anticipated that, by the use of his broad investigative powers, he would frequently discover other serious violations of the Act hidden from a complainant or overlooked by him. To confine his challenge of an election to those violations complained of by the union member would disable the Secretary from using the fruits of his investigation to remedy the violations disclosed thereby, and would tend to frustrate the congressional purpose of ensuring free and honest elections. For example, a member might complain that he was improperly denied the right to vote. The Secretary's investigation might disclose that, unknown to the protestant, the ballot box had been stuffed. Under the rationale of the district court's decision, the Secretary would be powerless to act on the latter violation. The decision would place a premium on the ability of the union officers to conceal violations from their members.

The facts in No. 58 well illustrate the incongruity of limiting the Secretary to the precise allegations of the complaining union member. The complainant, Dial, was apparently able to secure evidence that nine ineligible members had been permitted to vote in the run-off election of July 13, 1963. The Secretary, upon investigation, quickly ascertained that a vastly larger number of ineligible members had been permitted to vote in that run-off election, and, further, that the

cause of this disregard of the union's own constitution was the Secretary-Treasurer's practice of "carrying" some delinquent members by making it appear that they had met their dues obligations when in fact they had not. An examination of the records which disclosed the true status of respondent's members with respect to the payment of dues also disclosed that ineligible members had been permitted to be candidates, as well as to vote, and that the violations complained of had permeated the general election as well as the run-off. It is doubtful whether the complainant could have gained access to these records to support his election protest. It may be assumed that he was unaware of the ineligibility of the candidates who opposed him. Congress, having given the Secretary broad investigative authority, cannot have intended that he be hamstrung by the ignorance of the complaining union member, by the artlessness of his protest, or by the lack of evidence available to him in support of his objections.[27]

[27] The role of the Secretary may be compared to that of the General Counsel of the National Labor Relations Board in investigating unfair labor practice charges under the Taft-Hartley Act. While the Board's General Counsel (like the Secretary, under the Labor-Management Reporting and Disclosure Act) can issue a complaint only after receipt of a charge, he may on his own initiative include in his complaint unfair labor practices concerning events which have occurred after the original charge was filed with him. The Supreme Court discussed the role of the Board in unfair labor practice proceedings—in language equally applicable to the function of the Secretary of Labor under Title IV—in *Labor Board* v. *Fant Milling Co.*, 360 U.S. 301, 307–308:

> A charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private

Finally, the practice of the Secretary in investigating fully the conduct of every election concerning which he receives a complaint, and in including in his suit allegations of all uncorrected violations that are substantial, is not opposed to the policy—which underlies the requirement that a union member protest the conduct of an election internally before filing a complaint with the Secretary—"to allow unions great latitude in resolving their own internal controversies * * * before resort to the courts." *Calhoon* v. *Harvey*, 379 U.S. 134, 140. For, it is also the Secretary's policy to notify the union in advance of filing suit of all violations disclosed by his investigation, so that the union may take voluntary corrective action. Thus, in No. 58, at the conclusion of the Secretary's investigation, both the respondent local union and the international were advised of his discovery of the mass ineligibility of voters and candidates in both phases of the election and of the underlying cause. When the international requested particulars, the

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lawsuit. Its purpose is merely to set in motion the machinery of an inquiry. * * * The responsibility of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party. To confine the Board in its inquiry and in framing the complaint to the specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. This would be alien to the basic purpose of the Act. The Board was created not to adjudicate private controversies but to advance the public interest * * *.

Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights, which Congress has imposed upon it.

Secretary's attorneys met with attorneys representing the international and furnished them with detailed information concerning the Secretary's findings. Yet, the international refused to recognize or correct any violation in the general election of June 8, 1963. The union had notice of all the violations disclosed by the investigation and deliberately forewent an opportunity to take voluntary remedial action before suit was filed—no less than if the internal complaint had specifically challenged the additional violations.

In sum, to confine the Secretary's suit either to the precise violations alleged in the internal complaint or even to violations within the general scope of that complaint would unwarrantedly and unnecessarily impede the congressional goal of union democracy.

III. IN NO. 57, THE DISTRICT COURT ERRED IN NOT FINDING THAT THE 75-PERCENT ATTENDANCE REQUIREMENT "MAY HAVE AFFECTED" THE OUTCOME OF THE 1963 ELECTION

Section 402(c) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 482(c), requires the court to void an election tainted by a violation of Section 401 which "may have affected the outcome." Congress deliberately chose this language to relieve the Secretary of the burden of showing that a violation actually did affect the result. S. 1555, the bill passed by the Senate, contained the "may have affected" language. 105 Cong. Rec. 16150. H.R. 8342, the bill passed by the House, as well as the Kennedy-Ervin bill as originally introduced in the

Senate (S. 505, 86th Cong., 1st Sess., 105 Cong. Rec. 892), required a showing that the violation "affected" the outcome. 105 Cong. Rec. 15887. Faced with a choice between these formulations, the Conference Committee adopted the "may have affected" language. Conf. Rep. No. 1147, 86th Cong., 1st Sess., pp. 33–35. Senator Goldwater explained (105 Cong. Rec. 19765):

> The Kennedy-Ervin bill (S. 505), as introduced, authorized the court to declare an election void only if the violation of section 401 actually affected the outcome of the election rather than may have affected such outcome. The difficulty of proving such an actuality would be so great as to render the professed remedy practically worthless. Minority members in committee secured an amendment correcting this glaring defect and the amendment is contained in the conference report.

It is hardly debatable that the 75-percent attendance requirement in No. 57 "may have affected" the outcome of the 1963 election. It rendered more than 97 percent of the membership ineligible to stand for union office, leaving only ten eligible members in a union of 500 members. Indeed, no candidates were even nominated for four of defendant's eight elective offices (recording secretary and three trustees), and four members who were themselves ineligible under the 75-percent attendance requirement were appointed to those positions in violation of the union constitution and bylaws and of Section 401(b) of the Act, 29 U.S.C. 481(b), which requires a union to "elect its officers."

So drastic a limitation of eligible candidates can-

not be assumed to have had no probable or possible effect on the outcome of the election. Here, as it happens, one candidate who was actually nominated—John L. Miller, who filed the complaint that triggered the Secretary's suit—was disqualified from running by reason of the challenged attendance requirement. And surely the Second Circuit ruled correctly in *Wirtz* v. *Local Unions 410, Etc.*, 366 F. 2d 438 (C.A. 2), that *any* exclusion of willing candidates from the ballot may affect the election's outcome. As the court explained (366 F. 2d at 443):

> The proviso was intended to free unions from the disruptive effect of a voided election unless there is a meaningful relation between a violation of the Act and results of a particular election. For example, if the Secretary's investigation revealed that 20 percent of the votes in an election had been tampered with, but that all officers had won by an 8–1 margin, the proviso should prevent upsetting the election. Compare *Wirtz* v. *Local 11, International Hod Carriers*, 211 F. Supp. 408 (W.D. Pa., 1962). But in the cases at bar, the alleged violations caused the exclusion of willing candidates from the ballots. In such circumstances, there can be no tangible evidence available of the effect of this exclusion on the election; whether the outcome would have been different depends upon whether the suppressed candidates were potent vote-getters, whether more union members would have voted had candidates not been suppressed, and so forth. Since any proof relating to effect on out-

> come must necessarily be speculative, we do not think Congress meant to place as stringent a burden on the Secretary as the district courts imposed here.

But we do not rest on that circumstance. Normally, it is impossible to establish whether additional candidates would have run even if the attendance requirement had not been in effect or whether those candidates would have lost if they had run. Such questions are hardly susceptible of proof; the statutory test of "may have affected" was designed to avoid such elusive and treacherous inquiries.

In sum, any mass disqualification of candidates, we suggest, satisfies the "may have affected" test and likewise any disqualification of avowed candidates. Under either standard, the district court here erred in finding that the unlawful attendance requirement was beyond its remedial powers under Title IV.

CONCLUSION

The judgments of the court of appeals should be reversed and the cases remanded to the appropriate district court. In No. 57, the district court should be instructed to enter an order directing a supervised election as requested by the Secretary. In No. 58, the district court should be instructed to decide whether the additional allegations of the Secretary have merit and, if so, to order the supervised election requested by the Secretary in that case.

Respectfully submitted.

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APPENDIX

STATUTES INVOLVED

The Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 401, *et seq.*) provides in pertinent part:

> SEC. 2. (a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.
>
> (b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations,

employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.

* * * * *

SEC. 401. (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor

organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

(e) In any election required by this section

which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall pre-

serve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within

one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organi-

zation. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

SEC. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

* * * * *

SEC. 601. (a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other [redacted]es) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to

interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 58

W. WILLARD WIRTZ, SECRETARY OF LABOR, *Petitioner,*

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE RESPONDENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 58

W. WILLARD WIRTZ, SECRETARY OF LABOR, *Petitioner,*

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE RESPONDENT

Respondent, Local Union No. 125, Laborers' International Union of North America, AFL-CIO (hereinafter referred to as the "Local") accepts the references to "Opinions Below," "Jurisdiction," and "Statute Involved," set forth in the Brief for the Petitioner, the Secretary of Labor (hereinafter referred to as the "Secretary").

QUESTIONS PRESENTED

Title IV of the Labor-Management Reporting and Disclosure Act of 1959, provides a remedy whereby a union member who has exhausted his internal union

remedies may challenge the validity of an election conducted by his union by filing a complaint with the Secretary. If the Secretary, upon investigation of such complaint, finds probable cause to believe that a violation of the Act has occurred which may have affected the outcome of the election, he is authorized to challenge the validity of such election by bringing an action in a district court. This case raises for consideration the following questions:

1) Whether the instant civil action brought to set aside a local union's 1963 general election of officers was rendered moot by the conduct of the local's next regularly-scheduled and unchallenged general election of officers in 1966.

2) Whether the instant civil action was rendered moot, in any event, by remedial amendments to the local's constitution adopted at the October 1966 convention of the local's parent body.*

3) Whether a civil action by the Secretary under Section 402 to remedy election violations may encompass (a) matters not included in a member's complaint to the Secretary; and (b) matters not included in a complaining member's protest to his union.

STATEMENT OF THE CASE

A. The Factual Background

Local Union 125, of Youngstown, Ohio, is an affiliate of the Laborers' International Union of North America, AFL-CIO (hereinafter referred to as the "International"). In June 1963, the Local had more than 700 members (R. 47). About 950 local unions having approximately 500,000 members in the United States and Canada are affiliated with the International (R.

* This additional suggestion of mootness is being raised for the first time in this Court.

86). All of these affiliated local unions are governed by the Constitution of the International and by a Uniform Local Union Constitution (R. 50). The latter establishes standards and procedures for the triennial nomination and election of local union officers (R. 32-35), and also provides separate appeal procedures for raising pre-election and post-election complaints. Under these procedures any member aggrieved with the conduct of the nomination process is entitled to appeal directly to the International's General Executive Board prior to the election and any member aggrieved with the conduct of the election may protest directly to the International's General Executive Board within thirty days after the election (R. 38).

In accordance with Article VI, Section 1(a) of the Uniform Local Union Constitution (R. 35), at the Local's May 1, 1963 nomination meeting, three rank-and-file members were elected by a secret ballot vote of the membership to be Judges of Election (R. 60). Thereafter, nominations were conducted for all offices (R. 60). Cecil Dial, the incumbent Business Representative,[1] Andrew E. Jackson, a rank-and-file member, and a third candidate were each nominated for the office of Business Representative. The Judges of Election determined that each of the foregoing candi-

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[1] Although the Transcript of Record does not so indicate, the financial reports (LM-2), which are required to be filed annually by the Local with the Secretary pursuant to Section 201 of the Act, 29 U.S.C. 431, and which upon such filing become public documents, show that Dial was the Local's elected Business Representative from 1960 until his defeat in the July 1963 election. "Schedule 8—Disbursements to Officers" of the Local's financial reports for the years 1961, 1962, and 1963, which indicates the identity of the Local's officers during those years, is included as Appendix A, at pp. 1a-2a, *infra*.

dates was eligible to hold office (R. 46, 47). The June 8, 1963 election resolved all but one of the contests for office. A tie resulted between Dial and Jackson in the election for Business Representative (R. 64, 92). To resolve the tie, the Judges of Election conducted a runoff on July 13, 1963 (R. 64-65, 92). In the runoff, Dial was defeated by a vote of 198 to 179, and Jackson was sworn in as Business Representative (R. 55, 92).

On July 30, 1963, in accordance with constitutional provisions relating to post-election appeals (R. 38), Dial protested the conduct of the runoff to the International's General Executive Board, claiming that nine ineligible members had voted (R. 44-45). Dial's protest was acknowledged as a timely appeal, and it was placed on the agenda of the General Executive Board along with other cases scheduled to be heard (R. 42, 43). Dial and the officers of the Local were advised of the time and place of hearing, and both sides were afforded the opportunity to present documentary evidence and/or appear in person to testify (R. 42, 43). In accordance with this notice, a Hearings Panel of the General Executive Board convened on October 24, 1963, in Chicago, Illinois, to hear Dial's appeal (R. 43). Both Dial and a representative of the Local appeared before the Hearings Panel to present evidence (R. 44-45).

The Hearings Panel considered the entire record developed at the hearing, *viz,* the documents and testimony, and on the basis thereof, made findings of fact and a recommendation to the International's General Executive Board (R. 44-45). Based on this record, the Panel recommended that Dial's appeal be denied

on the ground that in view of the nineteen vote margin between Dial and Jackson, Dial's allegation that nine ineligible members had voted could not have affected the outcome of the election (R. 44-45, 92). On December 2, 1963, th General Executive Board advised Dial that it had approved and adopted the findings and recommendation of the Hearings Panel (R. 44-45, 92). Dial thereafter filed a complaint with the Secretary, asking "the Department of Labor to investigate an election held at Local 125, July 13, 1963" (R. 59).

On January 27, 1964 a representative of the Secretary notified the International's General President that an investigation had been conducted, not only of the July 13, 1963 runoff election but of the Local's June 8, 1963 general election of officers as well. The Secretary's communication asserted probable cause to believe a violation of Title IV had occurred, bottomed on the legal conclusion that members not in good standing had been candidates and had voted in both elections. The Secretary's view was predicated upon his interpretation of the "good standing" provision contained in Article VIII, Section 5 of the Uniform Local Union Constitution holding that all members more than two months in arrears in dues are automatically suspended and deprived of all membership rights, including the right to vote and to be candidates. Under the Secretary's view good standing could only be acquired by the payment of a readmission fee in accordance with Article VIII, Sections 7 and 8 (R. 37).

The Secretary found that the Local had not applied this constitutional provision and had thereby permitted automatically suspended members to be candidates and

vote in the June 8, 1963 general election, as well as in the July 13, 1963 runoff election. The International's General President was further advised that a civil action would be brought against the Local within sixty days of Dial's complaint to the Secretary unless all violations were remedied by the conduct of general nominations for all offices and a new general election (R. 68-70).

By letter dated January 31, 1964, the International's General President notified the Department of Labor of the International's legal position that the Secretary was without statutory authority to challenge either the nomination process or the conduct of the June 8, 1963 general election. The expressed ground was that, contrary to the requirements of Article XII, Section 8, of the Uniform Local Union Constitution (R. 38), no member had protested the nominations or the June 8, 1963 general election (R. 71-72). The General President acknowledged that Dial had timely and properly protested the July 13, 1963 runoff to the General Executive Board, and that his subsequent complaint to the Secretary concerning that election was properly within the Secretary's authority under Title IV (R. 71). The General President further advised that with respect to the Secretary's vague allegation that a violation had occurred in the runoff, the record developed before the Hearings Panel of the General Executive Board indicated that the number of ineligible voters alleged by Dial to have voted in the runoff could not have affected the outcome of the election. The General President concluded by stating that the International was prepared to restore the case relating to the runoff election to its appeals docket for reconsideration if additional information was submitted showing

that ineligible members, sufficient in number to affect the outcome of the election, had voted (R. 73-74).

B. The Proceedings Below

1. The District Court

On February 7, 1964, the Secretary filed a civil action against the Local in the United States District Court for the Northern District of Ohio, Eastern Division, to declare invalid the June 8, 1963 general election and the July 13, 1963 runoff. The complaint alleged that nomination and election irregularities had affected the outcome of the elections of all officers and asked for judgment declaring the elections null and void and an order directing a new general election under the supervision of the Secretary (R. 4).

On March 4, 1964, the Local filed a motion to dismiss the allegations of the Secretary's complaint which sought to set aside the general election of June 8, 1963. The district court (Connell, C.J.), granted this motion (R. 15). The court found that the complaint failed to allege that a member had "complained internally" about the conduct of the June 8, 1963 election; and that the internal union challenge by Dial against the runoff election could not operate to bring the entire general election under the scrutiny of the Secretary and the jurisdiction of the district court (R. 6-7). The court concluded from the legislative history that Congress did not intend to abrogate the traditional requirements of the exhaustion doctrine "in favor of summary action by the federal government" (R. 9), and that pursuant to such doctrine as incorporated in Section 402, "a complaining member must first seek redress from his peers before inviting the government to champion his cause" (R. 10). The court concluded

that the International had not been obligated to pass upon the election of June 8, 1963, and that it was not "estopped from asserting the failure of a condition precedent to the Secretary's complaint against the election" (R. 14). Judgment was entered on July 14, 1964 (R. 15). On August 19, 1964, the Local filed its answer to that portion of the complaint not affected by the earlier order of the district court (R. 16, 17).

On June 1, 1965, the Secretary filed a motion for summary judgment, "except insofar as said relief concerns that part of defendant's election held June 8, 1963" (R. 57-58). On April 19, 1966, the district court (Battisti, J.), granted the Secretary's motion directed to setting aside the runoff election for Business Representative. It found that fifty-eight ineligible members had voted in the runoff, and that these votes may have affected the outcome of the election (R. 99-100, 107). It further found that Jackson, who had been elected in the runoff, had not been properly qualified to run since he had not paid his dues within the constitutional period and was automatically suspended under Article VIII, Section 5 of the Uniform Local Union Constitution (R. 37, 108).[2] However, the court did not rely upon the foregoing ground in setting aside the runoff since no internal union challenge to Jackson's eligibility had been made.

The court declared the July 13, 1963 runoff election to be null and void and ordered that the Local's next regularly scheduled election for Business Representative be held under the Secretary's supervision. Judgment was entered on April 18, 1966 (R. 110-111).

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[2] Jackson paid his May and June, 1963 dues on July 1, 1963, a Monday (R. 83).

2. The Supervised Election

On May 18, 1966, in conjunction with the Local's preparations for its triennial election, the Secretary's representatives, pursuant to the order of the district court, held a pre-election conference with the Local's officers (R. 110). Details associated with the conduct of the nomination and election process, such as the nomination of candidates, notices of nomination and election, the date of election, the number of printed ballots, and the manner of selection of the Judges of Election, were agreed upon by the Secretary's representatives and the Local.

Nominations were entertained thereafter for all offices, including Business Representative. Dial, Jackson, and a third candidate were nominated to run for Business Representative. The election for Business Representative was conducted on June 11, 1966, and was supervised by four representatives of the Department of Labor. The election of all other officers was held simultaneously. The official results showed that Jackson, then the incumbent, received 168 votes; Dial, 161 votes; and a third candidate, 33 votes. The court, upon certification by the Secretary, issued an order declaring that Andrew Jackson was the duly elected Business Representative of the Local (Certified Transcript).

3. The Court of Appeals

The Secretary filed notice of appeal on June 10, 1966, the day before the supervised election, from: (1) the order of July 14, 1964, dismissing the portion of the complaint challenging the general election; and (2) the order of April 18, 1966 granting the Secretary's motion for summary judgment. The Local moved to dis-

miss the Secretary's appeal in the court of appeals on the ground that there was no longer an actual controversy between the parties, it having been mooted by the intervening general election of June 11, 1966.

On December 15, 1966, the court of appeals rendered its decision, finding that the present officers of the Local held office pursuant to the 1966 general election and not the 1963 general election challenged by the Secretary. It agreed with the Local that:

> . . . This fact renders moot the question on appeal, since the statutory remedies for election irregularities can serve no purpose here in light of the subsequent election which has been held. (R. 112)

SUMMARY OF ARGUMENT

I.

In Section 401 of the Labor-Management Reporting and Disclosure Act of 1959 Congress established standards and procedures to govern the conduct of union elections. In addition to guaranteeing such fundamental safeguards as a secret ballot and the right of candidates to have observers at the polls, Congress also sought to ensure that labor organizations would abide by their own organic principles of union democracy. Hence, it provided that union elections must be conducted in accordance with a union's own constitution and bylaws.

Section 402 establishes a narrow remedial scheme intended to enable union members to facilitate compliance by their unions with the provisions of Section 401. Under this scheme a member who has challenged the validity of an election conducted by his union before the union's internal tribunals and who is dis-

satisfied with the outcome of his appeal is authorized to file a complaint with the Secretary. Upon receipt of a complaint the Secretary is required to "investigate such complaint and, if he finds probable cause to believe that a violation" of Title IV has occurred he is authorized to bring suit to set aside "the invalid election" and to obtain an order directing the conduct of a new election under his supervision. In such suits the district court has the power to declare void "the [challenged] election" and direct the conduct of a "new election under supervision of the Secretary . . . ."

The language of the statute itself thus makes it abundantly clear that the Secretary is limited to seeking to set aside the results of an "invalid election," through the unseating of unlawfully elected officers. However, if during the pendency of the Secretary's suit a union conducts its next regularly-scheduled election it is self-evident that the Secretary's action is rendered moot. Otherwise, an order directing the Secretary to conduct a supervised election would bring about the unauthorized ouster of officers elected in the supervening unchallenged election, prior to the expiration of their constitutional terms of office, without any showing that they have been elected improperly. Rather than allowing such an incongruous result, the statute confines the court to invalidating challenged elections and thereby unseating improperly elected officers. And once the terms of office of such improperly elected officers have expired, there remains nothing of the invalid election to void and the cause is rendered moot.

The experience of the Department of Labor in administering Title IV indicates that the Secretary has been extraordinarily successful in the limited number

of suits which he has instituted and that mootness has not seriously impeded the vindication of statutory rights. It is also clear that the problem of mootness does not arise from a misreading of the statute but rather from the ordinary delays which commonly beset modern judicial administration. Hence, as has been suggested by the lower courts, the solution to the occasional inconvenience resulting from the application of mootness principles to Title IV cases resides in the expedition of hearings and trial of such cases to the greatest extent possible. An order of this court so directing would aid in promoting the statutory objective of resolving election disputes promptly without in any way sanctioning the courts and the Secretary to exceed their limited congressional mandate.

Even if it were to be assumed that notwithstanding the conduct of supervening union elections, the courts remain empowered to direct supervised elections, the need for such an election in the instant case has been entirely dissipated and the case is, in any event, rendered moot by reason of curative amendments to the Uniform Local Union Constitution adopted at the October 1966 Convention of the International.

The Secretary's complaint alleged that in the Local's 1963 general election, fifty to sixty members were permitted to vote and sixteen members were permitted to be candidates even though under Article VIII, Section 5 of the Uniform Local Union Constitution such members should have been denied the right to vote and to be candidates. The Secretary argued that under Article VIII, Section 5, the foregoing members had at some time failed to pay their dues within the required constitutional period and therefore were automatically suspended from membership. According to the Secre-

tary such members could not restore themselves to good standing for the purpose of voting eligibility without the payment of a readmission fee under the provisions of Article VIII, Sections 7 and 8 of the Constitution In addition, to qualify as candidates, such members would be required to maintain such good standing for two years after readmission.

This interpretation of the Uniform Local Union Constitution did not comport with the International Union's historical custom and practice, would have disenfranchised thousands of members, exacted from them unnecessary levies and deprived them of other valuable benefits of union membership. Accordingly, in October, 1966, subsequent to the conduct of the supervised election for Business Representative in the Local, delegates to the International's Convention unanimously adopted amendments clarifying the Union's Constitution to reject expressly the Secretary's interpretation and make loss of "good standing" contingent upon express action of the International Union. These amendments are set forth in Appendix D at pp. 24a-26a, *infra*. Their adoption renders the instant case moot since in any future election in the Local, all of the members claimed to have been improperly permitted to vote and be candidates would be permitted to vote and run for office if they had not, *in fact*, been suspended by the International and were current in the payment of their dues on election day.

II.

The language of the statute equally makes clear that the Secretary may seek to remedy only those violations with respect to which he has received complaints from members and that, in addition, he may do so only to

the extent that such complaining members have sought redress within their union concerning their protest. Hence, Section 402 of the Act preconditions the filing of a complaint by a member with the Secretary upon the requirement that the member must have "exhausted the remedies available under the constitution and by-laws of such organization and of any parent body" and that upon the filing of a complaint with the Secretary, "the Secretary shall investigate such complaint . . . ." Accordingly, the Secretary is precluded by the statute from going beyond the scope of a member's complaint as well as outside of those matters raised by the complainant before his union.

In the instant case, the complainant, a defeated incumbent, limited his complaint to the Secretary to the Local's July 13, 1963 runoff election for Business Representative. He also limited his protest to the General Executive Board of the International to that contest. There was no warrant, therefore, for the Secretary to seek to set aside the Local's June 8, 1963 general election; and the district court correctly dismissed the Secretary's complaint insofar as it sought to nullify that election.

The foregoing conclusion is amply supported in the legislative history as well as in the decisions of courts which have considered the question. Moreover, this position also finds strength in the well-established policy of the courts to refuse to entertain *de novo,* issues on appeal from decisions of administrative agencies unless the agencies first have had an opportunity to consider and pass upon the questions. The application of this policy to union tribunals is consistent with the intention of Congress to preserve and

promote union self-government and thereby encourage unions to manage their own affairs in a manner which will preclude the necessity for governmental intervention. The position advanced by the Secretary, which would permit a member to invoke his union's internal judicial processes as a mere *procedural* prerequisite to the filing of a complaint with the Secretary, would destroy completely those processes of internal union self-government which the Act seeks to encourage. Moreover, union tribunals are as entitled as the courts to avoid deciding cases or controversies not brought before them.

Finally, the fact that Congress limited the Secretary under Section 402 to bringing suit over matters which have been raised by a complainant before a union's internal tribunal would not entirely remove the Secretary's authority to investigate and monitor union elections. Under Section 601, the Secretary is given extensive authority to investigate and to report his findings to interested persons, including union members. Such investigations may be made without an election complaint having been filed by a member, as well as in the complete absence of probable cause to believe a violation has occurred. Members alerted by the Secretary to election misconduct as a result of Section 601 disclosures may seek to invoke the union's own internal procedures, and, if unsuccessful, they may then complain to the Secretary. But as to violations uncovered concerning which there has been no internal exhaustion and as to which no complaint has been received from a member, the Secretary is precluded from seeking judicial relief under Title IV.

ARGUMENT

I. THE INSTANT CASE HAS BEEN RENDERED MOOT BY SUPERVENING EVENTS

A. The Conduct of the Local's Regularly Scheduled and Unchallenged Election in 1966 Has Mooted the Secretary's Action

In Title IV of the Labor-Management Reporting and Disclosure Act of 1959, Congress prescribed standards and procedures intended to assure fair and honest union elections. In addition to requiring such fundamental safeguards as a secret ballot and the right of candidates to have observers at the polls and at the counting of the ballots, Congress also enacted substantive time limitations upon the terms of union office in order to guarantee that union elections would be conducted within reasonably frequent intervals. For example, Section 401(b) provides that "[e]very local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing." Further, to insure that labor organizations would remain faithful to their own indigenous norms regarding union democracy, Section 401(e) requires that a union's election ". . . shall be conducted in accordance with the constitution and bylaws of such [labor] organization insofar as they are not inconsistent with the provisions of this title."

Section 402 creates a narrow remedial scheme intended to permit union members to facilitate compliance by their unions with the standards of Section 401. It authorizes the filing of a complaint with the Secretary by a member who has challenged the validity of some aspect of his union's election before the union's

internal tribunals and who maintains that he has not been provided with either proper or speedy redress of his grievance. Upon the filing of such complaint, Section 402(b) requires that:

> The Secretary shall investigate such complaint and if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office *to set aside the invalid election . . . and to direct the conduct of an election* . . . under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization. (Emphasis added).

The statutory language thus clearly resolves the threshold question of whether a suit brought by the Secretary under Section 402 is mooted by the unchallenged conduct of the defendant union's next regularly-scheduled election. Under Section 402(b) it is apparent that the Secretary's authority is limited to bringing suit "to set aside the invalid election." In addition, in entertaining the Secretary's action, Section 402(c) provides that:

> If, upon a preponderance of the evidence after a trial upon the merits, the court finds—
>
> * * * * *

> (2) *that the violation of section 401 may have affected the outcome of an election, the court shall declare the election . . . to be void and direct the conduct of a new election* under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization . . . . (Emphasis added).

The court is thus restricted to declaring void "an election" as to which a "violation of section 401 may have affected the outcome" and to directing the "conduct of a new election." Hence, if in accordance with the time limitations set forth in a union's constitution, or in Section 401 of the Act, the union conducts its next regularly-scheduled election while a suit under Section 402 is pending, the action is rendered moot. Since the terms of office arising from the invalid election have expired, and new officers elected in the unchallenged, supervening election have taken office, there remains nothing of the invalid election to be voided. An order directing a new election, notwithstanding the conduct of an intervening, unchallenged election, would compel the unauthorized and premature unseating of the officers lawfully elected in the supervening election. And the removal of such officers prior to the expiration of their constitutional terms of office would exceed the Secretary's mandate which is limited to seeking to void an "invalid union election," as well as the district court's authority which is confined to setting aside a challenged election in which a violation has occurred.

The foregoing conclusions are reinforced by the language of Section 402(d):

> An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same man-

> ner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

This provision indicates that Congress recognized that the frequency of union elections taken together with the recurrent delays in civil litigation presented the possibility of mootness impeding the success of Title IV litigation. Hence, by enacting Section 402(d) it made certain that at least where the Secretary succeeded in obtaining a district order directing an election, his victory would not be short-lived by delays resulting from the issuance of a stay pending appeal.

The Second Circuit Court of Appeals recognized the applicability of these principles in *Wirtz* v. *Local 410, etc., Operating Engineers,* 366 F. 2d 438, 442:

> It would serve no practical purpose with respect to these locals to declare their 1962 elections void because the terms of office thereby conferred have expired. And because Title IV does not permit the Secretary to seek either to enjoin future elections, or to declare a given candidacy requirement unlawful absent a valid complaint and an investigation of its application to a specific election . . . we conclude that we have no power to afford the Secretary relief and therefore that these cases are moot.

In addition, in *Wirtz* v. *Local 153, Glass Bottle Blowers Assn.,* 372 F. 2d 86, appealed from in No. 57, the Third Circuit declared with respect to the mootness issue:

> For whatever reasons Congress, in enacting the enforcement provisions contained in section 402, did no more than to provide an administrative and judicial procedure for determining the legality of a particular election of local union officers. The

> only suit authorized under section 402 is a suit by the Secretary to set aside that election of which an aggrieved unionist has complained. (*Id.* at 88).

It is thus apparent that in the instant case no practical purpose would be served by declaring the Local's 1963 election void since the terms of office of those then elected have expired. Where the relief sought is futile, impossible, or at best, academic, no court should be called upon to act. This controversy became moot when, in accordance with the time schedule in the Local's constitution, the Local conducted a general election which was never challenged. As this Court declared in *United States* v. *Alaska Steamship Company,* 253 U.S. 113, 116:

> . . . this court is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it.

Moreover, the principle of mootness has been recognized as being particularly applicable to cases involving elections. Hence, in *Mills* v. *Green,* 159 U.S. 651, a suit against a South Carolina county supervisor of elections to enjoin a denial of voting rights in a forthcoming election, this Court declared the action moot by reason of the conduct of the election. See *Jones* v. *Montague,* 194 U.S. 147; *Bynum* v. *Burns,* 379 F. 2d 229 (8th Cir.); *Fair* v. *Dekle,* 367 F. 2d 377 (5th Cir.); *Munoz* v. *Amador,* 340 F. 2d 590 (5th Cir.); *Colpo* v. *Highway Truck Drivers, Local 107,* 305 F. 2d 362 (3rd Cir.) *cert. denied,* 371 U.S. 890.

The analogy to the Voting Rights Act of 1965, advanced by the Secretary to support his authority under Title IV "to undo elections not themselves shown to

be illegal," if "necessary to assure the complete extirpation of proven wrongful conduct" (Pet. Br. p. 27), is wholly inapposite. In addition to authorizing the district court in suits brought by the Attorney General under that Act to issue injunctions and appoint federal registrars, the Voting Rights Act expressly authorizes the district court to retain jurisdiction in such suits "for such period as it may deem appropriate" to enforce the guarantees of the fifteenth amendment.[3] Had Congress sought in the LMRDA to give the district courts similar ongoing authority in the supervision of union elections, it could readily have enacted comparable provisions in Title IV.[4] Congress chose instead to limit the courts to remedying specific violations arising in particular elections. And, as the Secretary concedes, Congress deliberately rejected injunctions as a Title IV remedy (Pet. Br. p.35).

Nonetheless, in support of his position the Secretary advances the novel theory that a finding of a violation of Title IV

> . . . destroys the presumption of regularity that would otherwise attach to the union's conduct of

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[3] "[D]uring such period no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . . ." 42 U.S.C. 1973a(c).

[4] Reliance by the Secretary upon cases arising under the National Labor Relations Act, as amended, 29 U.S.C. 141 et seq., is equally misplaced. Congress, under that statute, provided for cease and desist and affirmative orders which contemplate prospective compliance, and also expressly authorized both mandatory and discretionary injunctive relief.

> its own election; the intervention of an unsupervised election is not sufficient to restore it. Even if it cannot be shown in a post-election investigation that the intervening election was conducted in violation of the Act, there can be no assurance that the unlawfully elected incumbents forewent the opportunities for manipulation that an unsupervised election permits. A laboratory election remains necessary to assure that the control achieved by violating the Act in the first election is not perpetuated by subtle means in the second (Footnote omitted) (Pet. Br. p.25).

While the Secretary thus takes the position that "the taint of the original election infects the next and is curable only by the Secretary's 'laboratory' election" (Pet. Br. p.19), and that an intervening election does not deprive him of authority to conduct such an election, the legislative history indicates that Congress expressly rejected proposals which would have required that union elections be supervised by governmental agencies, in favor of retention by unions of control over their own electoral processes.[5]

Aside from conflicting with the overall statutory scheme as reflected in the language of Section 402 and the relevant legislative history, the Secretary's theory relies upon several assumptions which have no foundation in reality.

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[5] S. Rep. No. 1684, 85th Cong., 2nd Sess. 12-15 (1958), reprinted in U. S. Department of Labor, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, Titles I-VI*, p. 702 (1964) ("Dept. Lab. Leg. Hist." hereinafter); see also S. 1137, 86th Cong., 1st Sess., Sec. 302(a)(7)(1959), reprinted in National Labor Relations Board, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, pp. 260, 297 (1959) ("NLRB Leg. Hist." hereinafter).

The first such false premise is that a "continuing need for a laboratory election exists when it is not known whether the violation giving rise to the Secretary's suit persisted into the second election" (Pet. Br. p.21). Hence, for example, the Secretary indicates that representatives of the Department of Labor who supervised the 1966 election for Business Representative in Local Union 125 were "not in a position to determine whether ineligible members either ran for office or voted at the election for the other officers" (Pet. Br. p.21, fn.4), *which took place simultaneously* with the supervised election for Business Representative. The flaw in this argument is twofold. First, it flies in the face of the facts of the instant case.[6] In-

[6] The uncontradicted affidavit of Martin M. Mason, Secretary-Treasurer of the Local filed in the court of appeals in support of respondent's motion to dismiss the Secretary's appeal on the ground of mootness declared as follows:

> Joseph D. Caiola, Rocco DeMarco, Charles S. Mato and Richard A. Crino represented the Department of Labor in supervising the election for Business Representative and observed and assisted during the general election of officers at the request of the election judges. The representatives handled the eligibility lists and in several instances determined that members were not eligible to vote. These members did not vote in either election. The representatives also supervised the distribution of ballots with election judges, handing out ballots for both elections. Department representatives also assisted members who could not read, in the voting booth and in depositing ballots in the box.
>
> The ballots cast in the election for Business Representative were counted first and this count was completed at approximately 9:00 p.m. Thereafter, the representatives of the Department of Labor stayed and observed the counting and tally of ballots cast in the general election and the declaration of results. The representatives left after all ballots were counted and the election judges announced the winners. (Certified Transcript of Proceedings in the Court of Appeals).

deed, in light of the Secretary's presence and participation during the conduct of the union's regular triennial election in 1966, it would appear that there is no longer any practical necessity for a "laboratory election" conducted under the Secretary's auspices.

The second flaw in this argument lies in its indifference to the Secretary's broad investigatory and visitorial powers under Section 601 of the Act pursuant to which he may monitor union elections from beginning to end without regard to whether complaints have been filed by members concerning such elections, *Local 57, Operating Engineers* v. *Wirtz,* 346 F. 2d 552 (1st Cir.); *Wirtz* v. *Local 191, Teamsters,* 321 F. 2d 445 (2nd Cir.), or whether there is cause to believe a violation has occurred. *International Bhd. of Teamsters* v. *Goldberg,* 303 F. 2d 402 (D.C. Cir.), *cert. denied,* 370 U.S. 938; *Goldberg* v. *Truck Drivers Local 299,* 293 F. 2d 807 (6th Cir.) *cert. denied,* 368 U.S. 938.[7] In such investigations, which may be instituted for the sole purpose of satisfying the Secretary's administrative curiosity, information may be gathered, reports

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[7] Section 601(a) provides as follows:

"The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except Title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation."

may be prepared, and union members, among others, may be advised of the Secretary's findings.[8]

The purpose of this broad delegation of investigatory and disclosure authority was explained by the Senate Committee on Labor and Public Welfare as follows:

> This provision insures that union members will have all the vital information necessary for them to take effective action in regulating affairs of their trade union, either through voluntary compliance of the labor organization with the reporting requirements of the act or as a result of investigation and reports by the Secretary of Labor.[9]

The interrelationship between the Secretary's investigatory authority under Section 601 and his remedial powers under Section 402 was considered by the Second Circuit Court of Appeals in *Wirtz* v. *Local 191, Teamsters,* 321 F. 2d 445, 448:

> No conflict is created by reading Section 402 and Section 601 together. Section 402 provides for the Secretary's instituting an action in the courts in behalf of an individual who has complained of a violation of Title IV. Section 601 provides that the Secretary shall "determine the facts relative" to a violation or threatened violation and that he

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[8] "The public disclosure functions of Section 601 have a certain similarity of purpose with the disclosure concepts of the Securities and Exchange Act; to a degree each has as its purpose ventilation of facts in which the public at large, as well as a particular segment—here union members—have a genuine interest . . . ." *International Bhd. of Teamsters* v. *Wirtz,* 346 F. 2d 827, 831 (D.C. Cir.)

[9] S. Rep. No. 187, 86th Cong., 1st Sess. 9 (1959), reprinted in NLRB Leg. Hist. 405.

> may report the results of his investigation "to interested persons or officials." It may be that some or all of the limitations of Section 402, such as the exhaustion of internal remedies, are relevant to the suit which that section authorizes; there is in Section 601 no similar limitation on the Secretary's power to investigate and report. Presumably the Secretary can bring an action only when a complaint has been filed by an individual member (Section 402). But he can investigate and report without such a complaint. The two sections of the statute can thus be read together and each be given full effect in complete harmony and without any trace of clashing purposes.

Accordingly, there can be no question that the Secretary was in a position to know whether a violation "giving rise to the Secretary's suit persisted into the second election" (Pet. Br. p.21), and that he could have reported any findings of irregularities to the members of the Local and others. Members thusly alerted to the existence of violations during the 1966 election could have resorted to the union's internal tribunal and, if there unsuccessful, to the Secretary.

The Secretary's next unwarranted assumption, relied upon to support the continuing need for a supervised election, is that "incumbent officers enjoy inherent advantages in obtaining re-election in an unsupervised election because they control the electoral machinery" (Pet. Br. p.12), and that "[e]ven if it cannot be shown in a post-election investigation that the intervening election was conducted in violation of the Act, there can be no assurance that the unlawfully elected incumbents forwent the opportunities for manipulation that an unsupervised election permits" (Pet. Br. p.25).

The baselessness of this argument is made plain by the facts of the instant case. At the Local's May 1, 1963 nomination meeting, in accordance with Article VI, Section 1, of the Uniform Local Union Constitution, three rank-and-file Judges of Election were chosen in a secret ballot election (R. 35). The chairman of the Judges then entertained nominations for office (R. 60). Cecil Dial (the incumbent Business Representative), Andrew E. Jackson, and a third candidate were nominated for Business Representative. The Judges determined that each candidate was eligible to hold office (R. 46-47). Because the June 8, 1963 election for Business Representative resulted in a tie between Dial and Jackson, the Judges conducted a runoff election on July 13, 1963. In the run-off, Jackson defeated Dial by a vote of 198 to 179 (R. 55, 92).

It thus appears that none of the Government's sinister preconceptions materialized in the instant case. The election was not conducted by incumbents, but rather, by a committee of disinterested members who had themselves been elected by a secret ballot vote of the members. In addition, it was Dial, an incumbent officer, who was defeated in the election and who ultimately sought the assistance of the Secretary,[10] and it was Jackson, a rank-and-file member, whom the Secretary sought to remove from office.

Moreover, contrary to the Secretary's supposition that his presence is necessary to "break the cycle of control" which incumbents allegedly perpetrate (Pet. Br. p.22), the fact is that a vast number of unions have provided for rank-and-file supervision of their elections. A 1965 Labor Department study of the provi-

[10] The complainant in No. 57 was also an incumbent (57 R. 27).

sions of the constitutions of national unions covered by the Act having 40,000 or more members reported as follows:

> Twenty-four of the pre-LMRDA and twenty-five of the post-LMRDA constitutions, governing nearly one-half of the membership of the organizations studied, have provisions directing subordinate local unions to conduct officer elections under the immediate supervision of a committee. In addition, a large majority of those constitutions specify the composition of the committee, the method of selecting its members, and their duties . . . .
>
> Post-LMRDA constitutions designating the composition of election committees generally require them to be composed of 3 or more good standing, impartial, rank-and-file members who are not candidates for office. The selection of members is sometimes further limited to members in attendance at the nominating meeting, at which time most election committees are formed. In addition, a few unions, including the Hod Carriers [Laborers'] and the Ladies' Garment Workers, require election committee members to have the same qualifications as officers. Thus, the former union's post-LMRDA constitution directs local elections to be conducted under the supervision of three "Judges of Election," who are elected or appointed at the nominating meeting; only members who are not candidates are eligible, but they must
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> ". . . possess all of the qualifications required of candidates for office. The Chairman at said meeting shall examine such qualifications."[11]

Even in those instances in which incumbent officers do supervise union elections there is no basis for the

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[11] U. S. Department of Labor, *Union Constitutions and the Election of Local Union Officers* (1965) pp. 61-62.

assumption that opportunities exist for election manipulation by "using techniques which are not demonstrably unlawful but nonetheless favor incumbents" (Pet. Br. p.22), or that such techniques are outside of the direct purview of Title IV, and are therefore subject to being remedied only in a "supervised" election. In addition to all of the specific provisions of Section 401 designed to equalize the positions of candidates who may be challenging incumbents,[12] Section 401(c) declares broadly that "[a]dequate safeguards to insure a fair election shall be provided. . . ." Hence, it would seem reasonable to conclude that "decisions regarding election procedure which favor the incumbent slate" (Pet. Br. p.22), which would undermine "a fair election" would be within the Secretary's power to remedy on a case-by-case basis in response to complaints from members.

Moreover, the Secretary's assertion that "unlawfully elected incumbents . . . perpetuate their office in

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[12] "To prevent union officials from gaining improper advantage, section 401 (c) requires a union to distribute any candidate's campaign literature to the members at his own expense, and to refrain from discrimination between candidates in making other facilities available. Section 401 (g) prohibits using union funds to promote the candidacy of any person. The administration of the latter provision will require delicate judgments. When a union president visits major locals on union business during the months before an election, he is not unmindful of his political fences. The international representative who goes to another city to handle grievances may be expected to discuss an impending election. The incumbents invariably command more space in the union newspaper than the opposition. Legislation can no more wipe out these advantages than it can prevent a President's dramatic move toward world peace from aiding his campaign for reelection . . . ." Cox, *Internal Affairs of Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 844.

subsequent elections through control of the electoral machinery . . ." (Pet. Br. p.22), is purely conjectural and can find no support in the statutory scheme or the underlying facts. Indeed, in Section 402(a), Congress declared that every election challenged by the Secretary "shall be presumed valid pending a final decision thereon", and, in the enforcement procedure established to challenge such elections, the burden is placed upon the Secretary to prove by "a preponderance of the evidence" that a "violation of section 401 may have affected the outcome of an election." However, in his zeal to invalidate the Local's unchallenged 1966 election, the Secretary relies merely on suspicion and surmise contrary to the statute's express requirement of proof.

It is thus apparent that nothing in the statute or the legislative history gives rise to the slightest inference that an election supervised by the Secretary was intended to serve any long-term therapeutic purpose. Rather, all of the relevant indices point instead to the conclusion that the supervised rerun was merely designed to ensure that a *court-ordered* election would conform to the statutory requirements and that the Secretary would report to the court that all violations found to exist had been remedied.

Finally, in light of the Secretary's successful experience in litigation brought under Section 402, it is difficult to understand his frustration over the occasional application of well-established mootness principles to such suits. Between December 13, 1959, the first date upon which the election provisions of the Act became effective, and June 30, 1965, a period during which the more than 50,000 labor organizations covered by the

Act must have conducted substantially in excess of 100,000 elections subject to the provisions of Title IV, the Secretary filed a mere seventy-five suits seeking to vindicate Title IV rights.[13] The disposition of these seventy-five suits according to Department of Labor publications,[14] as well as other departmental sources was as follows:

> (1) In fifty-seven cases the Secretary (1) obtained court orders and/or stipulations providing that a rerun election or the next reguarly scheduled union election would be conducted in compliance with the Act and, in most cases, under the supervision of the Secretary; or (2) was otherwise satisfied that the union would take or had taken steps to remedy violations;
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> (2) In ten cases the Secretary was unsuccessful in obtaining the relief sought for reasons other than mootness;

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[13] "The Department's figures as of March 9, 1965, indicate that of the 383 cases that have reached the Washington office, violations affecting the outcome were found in 183. Of that latter group, 113 cases were settled through voluntary compliance. In 52 of these cases the Department supervised the correction, while in 61 cases no supervision was thought necessary." Note, *Election Remedies Under the Labor-Management Reporting and Disclosure Act*, 78 Harv. L. Rev. 1617, 1633.

[14] Bureau of Labor-Management Reports, *Summary of Operations, 1961*, Appendix B, pp. vi-ix; Bureau of Labor-Management Reports, *Summary of Operations, 1962*, Appendix A, pp. ii-x; Bureau of Labor-Management Reports, *Summary of Operations, 1963*, pp. 16-18; U.S. Department of Labor, *Summary of Operations, 1964, Labor-Management Reporting and Disclosure Act*, pp. 19-22; U.S. Department of Labor, *Summary of Operations, 1965, Labor-Management Reporting and Disclosure Act*, pp. 26-28; U.S. Department of Labor, *Summary of Operations, 1966, Labor-Management Reporting and Disclosure Act*, pp. 31-35.

(3) In the remaining eight cases, including the instant case and No. 57, the issue of mootness presented an impediment, in whole or part, to the Secretary's obtaining relief.[15]

These statistics give rise to several observations.[16] First, it would appear that in light of the very small number of suits instituted, voluntary compliance by unions with the requirements of Title IV has been extremely high.[17] Secondly, as to those few cases which have found their way to court each year, the Secretary has been extraordinarily successful in obtaining favor-

[15] In four of these cases the Secretary was partially unsuccessful for reasons other than mootness.

[16] All of the aforementioned cases have been collected in Appendix B at pp. 5a-19a. They have been listed in chronological order by date of filing. Each case reference indicates the disposition of the suit, in accordance with the categories enumerated above. Hence, the cases listed in Category I on pp. 5a-16a are those mentioned in Para. (1) above. Those listed in Category II on pp. 16a-17a are referred to in Para. (2) above and those listed in Category III at pp. 18a-19a are those referred to in Para. (3) above.

[17] "[T]hree-fourths of the national unions included in this study have deemed it desirable or necessary to amend their constitutions since the passage of the Act, revising previously existing provisions as well as adding new provisions pertaining to aspects of local election procedures not formerly contained in the constitutions. Many organizations have actually incorporated 1 or more of the election requirements of the Act in their governing documents either verbatim or by reference.[8]

[8] The impact which this legislation had on union constitutions is somewhat greater than that indicated by the number of post-LMRDA amendments, as a number of organizations apparently adopted amendments based upon the 'legislative debate prior to the passage of the Act.'" U.S. Department of Labor, *Union Constitutions and the Election of Local Union Officers*, p. 7 (1965).

able judgments or settlements.[18] Finally, in light of the few cases which have been rendered moot, it would appear that mootness has served in no significant way to impede the effective administration of the Act by the Secretary.

In any event, to the extent that mootness does limit the Secretary in his salutary desire to vindicate the rights of union members in Title IV litigation, it is readily apparent that the problem does not arise from a misreading of the statute, but rather, from the delays which commonly beset modern judicial administration. As the Second Circuit Court of Appeals observed in *Wirtz* v. *Local Union 410, etc., Operating Engineers,* 336 F. 2d 438, 444:

> As these cases illustrate, it is the delays incident to civil cases in the district courts which create the substantial likelihood that subsequent union elections will moot Title IV cases prior to appellate review. To prevent recurrence of such delays, we think the district courts should expedite the trial of Title IV cases to the greatest extent possible.... (Footnote omitted).

Respondent agrees with the Secretary that the remedies of (1) a new suit challenging the second election; (2) an injunction against the holding of another election pending completion of the Secretary's suit; and (3) an injunction against the practice found to violate the Act, are unauthorized by the statute, and are therefore unavailable to prevent a dismissal for mootness (Pet. Br. pp.33-37).

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[18] Moreover, the number of cases settled after the institution of suit would seem to conflict with the assertion that "a commencement of litigation generally stiffens the position of the parties and makes settlement more difficult" (Pet. Br. p.32, fn.18).

However, the Secretary much too readily dismisses the alternative of expedited proceedings in suits under Title IV. Ordering the advancement of hearings and trials in these cases would by no means be unique or unprecedented. In other election cases in which expedition has been necessary to effectuate the rights of the parties, the courts have not been hesitant to accelerate their proceedings to meet the exigencies of the situation. In *Ray* v. *Blair,* 343 U.S. 154, *opinion reported,* 343 U.S. 214, for example, the plaintiff sought a writ of mandamus in an Alabama circuit court on January 29, 1952, seeking a place on the ballot as a presidential and vice-presidential elector in the state primary to be conducted on May 6, 1952. A writ of mandamus issued, and the Alabama Supreme Court thereafter affirmed. This Court granted certiorari on March 24, 1952, heard argument on March 31, 1952, and rendered its decision and judgment on April 3, 1952, in advance of the filing of its full opinion on April 15, 1952. See *Gerende* v. *Board of Supervisors,* 341 U.S. 56. Surely, upon prompting from this Court the district courts would provide expedited treatment for Title IV cases.[19] Such treatment would not place an undue burden upon the courts or other litigants in light of the small number of cases arising under Title IV. And, more significantly, such a solution would serve to vindicate more fully the congressional purpose of resolving election disputes promptly without in any

[19] The Secretary could also make a contribution to this effort by availing himself of opportunities to quicken the pace of litigation. In the instant case he might have sought an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) from the July 14, 1964 decision of the district court dismissing part of his complaint. Instead, the Secretary waited almost two years to appeal from this judgment.

way sanctioning the Secretary to exceed his limited congressional mandate.

B. The Case Is in Any Event Mooted by Amendments to the Uniform Local Union Constitution Enacted at the October 1966 Convention of the International

Even if it were to be assumed *arguendo,* that notwithstanding the conduct of intervening elections, Congress intended to authorize the Secretary to oversee union elections as a remedy for alleged lingering violations, in the instant case the need for such continued surveillance has been entirely dissipated and the case has been rendered moot by supervening events not previously considered below.

The gist of the violation claimed by the Secretary to have occurred in the Local's 1963 general election and runoff was that fifty to sixty ineligible members were permitted to vote and sixteen ineligible members were permitted to be candidates (R. 75-76). The Secretary predicated his position upon Article VIII, Section 5 of the Uniform Local Union Constitution, which then provided: "The monthly dues are due on the first day of the month and unless paid on or before the last day of the following month, the member shall be considered to be in arrears and suspended without notice" (R. 37).

The Secretary construed this provision as requiring the Local to treat a member who had not made timely payment of dues as having been *automatically suspended without notice.* According to the Secretary, upon automatic suspension a member lost all rights of membership except the right to be restored to good standing by the payment of a readmission fee in accordance with Sections 7 and 8 of Article VIII (R. 37).

Hence, in the Secretary's view, members who had at any time fallen into bad standing were not entitled to vote or be candidates[20] in the Local's elections at least until a readmission fee had been paid (R. 95-96).[21]

The Secretary also found that "[t]he above violations resulted from the Local's payment of per capita tax to the International for certain persons, although the Local had not received dues payments from them" (R. 69). This practice itself had become a matter of concern to the International. Hence, on February 7, 1963, four months in advance of the Local's June, 1963 election, the General President and General Secretary-Treasurer, on behalf of the International's General Executive Board, wrote to all affiliated local unions, district councils, and members as follows:

> At the outset, it is to be observed that corresponding payments made by Local Unions to the General Secretary-Treasurer of the International Union, such as per capita tax, etc., are received and accepted on the presumption of propriety; namely, that the payments submitted are pursuant to and

[20] In addition, to be a candidate such a member was required to be "in continuous good standing in the International Union for a period of two years and in continuous good standing in the Local Union for a period of one year" (R. 34).

[21] In connection with the overall statutory purpose of encouraging membership participation in union affairs, it is of significance to note that the Secretary took the position that Jackson, the winner of the runoff, having paid his dues on Monday, July 1, 1963, was one day late in making timely payment and was, therefore, not in "good standing" and ineligible to run. *But cf., Wirtz* v. *Peninsula Ship Builders Ass'n.*, — F. 2d —, 66 LRRM 2156, in which the Fourth Circuit agreed with the Secretary that a suit brought under Title IV was timely filed within the 60-day period prescribed by Section 402(b) of the Act even though the action was filed on a Monday, the sixty-first day, since the sixtieth day fell on a Sunday.

> in accordance with the full intent of constitutional requirements. . . . It now appears that in some instances, Secretaries-Treasurers of Local Unions forward per capita tax to the International Union for certain members who have not paid dues for the corresponding month.
>
> * * * * * * *
>
> In order that this entire area of mistaken and improper activity may be corrected, the General Executive Board . . . voted, that in all instances where and when the General Secretary-Treasurer, on and after April 1, 1963, finds that per capita tax and other fees submitted by Local Unions, are not based upon corresponding payments directly made by the member to the Local Union, such submission shall be deemed to be invalid, improper, and of no effect.
>
> It must be noted, as stated above, that where and when such finding occurs, the result is, that the members affected are not in good standing if the delinquency is for a period longer than that specified and provided for in the Constitution (R. 39-40).[22]

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[22] Notwithstanding this admonition, the district court found that "the Secretary-Treasurer of the [Local] failed to comply with International Union's directive of February 7, 1963. In fact, he acted directly contrary to the instructions contained therein" (R. 99).

The Secretary-Treasurer of the Local, in an affidavit filed by the Secretary in support of his motion for summary judgment, explained his dereliction as follows:

> I as Secretary-Treasurer of Local 125 have, on my own initiative, paid per capita tax to the International for members who have not paid dues to the Local. Many of these persons should have been automatically suspended. I am also aware that these persons, delinquent over 61 days, should have been required to pay reinstatement fees to Local 125. According to our Constitution, these members who I have carried by paying their per capita tax who have not paid a reinstatement fee . . . are . . .

In addition to its desire to eliminate the practice of a Local's paying per capita tax for members who had not paid their corresponding dues, the General Executive Board of the International was also concerned over the serious implications of the Secretary's position, that under a literal reading of Article VIII, Section 5 of the Uniform Local Union Constitution, members would be deprived of their right to vote in a local union election if at any time during their membership they had been delinquent in dues for more than two months and had been automatically "suspended without notice," and had never paid a readmission fee thereafter. Hence, even though a member might have made up his arrearages in dues to the Local, according to the Secretary such a member could not restore himself to good standing unless he paid a readmission fee.

Accordingly, on January 17, 1966, the General President and General Secretary-Treasurer addressed a letter to all affiliated local unions, district councils and members, advising that the constitution was being misinterpreted to deprive members of their franchise notwithstanding that "[t]he Board had always interpreted its Constitution liberally to preserve the right of members to vote" (R. 89). The letter expressed concern that the Secretary's restrictive interpretation

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not members in good standing and they should not have been permitted to vote in Local 125's election. The reason I carried some of these members by paying per capita tax to the International was so that they would work. Unemployment has been high in Youngstown, Ohio and members don't have the money for dues. I paid their per capita out of the General Funds of the Local. However, many persons have been suspended by me for failure to pay dues. I only paid per capita for members I knew had been unemployed, had been long time . . . members and I took into consideration personnel [sic] hardships and family situations (R. 62).

"would result in depriving many tens of thousands of . . . members and their families of death benefits built up over the years and of pension rights under collectively bargained pension plans throughout this country." [23] The letter advised that the General Ex-

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[23] The Secretary's restrictive and unduly technical interpretation of the Uniform Local Union Constitution ignored the practical problems which the International Union attempted to meet in dealing with the host of problems faced by construction laborers. Because the vast majority of its members are confronted with the sporadic nature of construction employment, the International sought to preserve union membership and protect the members' right to vote from being affected by the economic hardships of unemployment. Indeed, in other areas subject to *his* concern, the Secretary has acknowledged and sought solutions to the problems of construction workers created by seasonality and unemployment:

> For construction workers, seasonality means serious unemployment and loss of earnings. Peak operations in the summer and fall draw many thousands of workers into the labor force who cannot find employment in the industry during the slack of winter. This has resulted in high unemployment in the winter, thus making the industry's unemployment rate in recent years more than double that for the Nation.
>
> * * * * * *
>
> The rate of unemployment in the construction industry is normally higher than in any other major industry division. Unemployed construction workers have regularly accounted for about 10 to 12 percent of all the unemployed, on an annual average basis. During the post-World War II period, among wage and salary earners, the annual rate for construction workers in private industry has been more than twice as high as for wage and salary workers in the total economy.
>
> * * * * * *
>
> . . . In terms of annual averages, unemployment rates for *construction laborers* run about twice as high as those for construction craftsmen. (Emphasis supplied). Myers and Swerdloff, *Seasonality and Construction,* 90 Monthly Labor Review 1-3 (September, 1967).

ecutive Board had adopted a resolution providing as follows:

> [The Union's] Constitutional provisions shall not be interpreted to deprive members of their legal and constitutional right to vote in those instances where local unions have accepted dues late and remitted per capita tax within the constitutional period to this International Union, so that the local unions were never notified by the International Union that such members were suspended . . . . (R. 90-91).

Notwithstanding this effort by the International to clarify the provisions in question, the district court in its April 1, 1966 decision (R. 92-109), adopted the Secretary's interpretation that "once a member has fallen in arrears and has thereby lost his rights, he may only regain the same by paying the established readmission fee" (R. 101).

On October 17-21, 1966, which was subsequent to the Local's 1966 general election, the International conducted its fifteenth constitutional convention. At the convention, the Committee on Constitution and Law proposed, *inter alia,* that Article VIII, Section 5 of the Uniform Local Union Constitution be amended to provide as follows:

> The monthly dues are due on the first day of the month and unless paid on or before the last day of the following month the member shall be *subject to be suspended by the International Union without notice.*

The report of the convention proceedings discloses that the foregoing amendment, designated Proposal 48, along with other proposed amendments, were intro-

duced in an effort to eliminate comprehensively the hardship created by the Secretary's restrictive interpretation of the Constitution:[24]

> SECRETARY O'SULLIVAN: Proposals 30, 35, 45, 48 and 50 are designed to clarify the present provisions of the Constitution and to conform the Constitution to the practice of the International Union.
>
> In the recent past, some of our affiliates which had conducted regular elections, found these elections being attacked by the Department of Labor which literally applied certain provisions of the Constitution, without giving due regard to the actual system under which the Union functions.
>
> Under these interpretations, the standing of a member in the Local Union was inquired into and if, at any time, a member had paid his dues beyond the constitutional period, it was the view of the government in certain cases that such member was not eligible to serve as a candidate for office or vote in the Union's election.
>
> This, however, was not the intent of the framers of the Constitution when the language of the Constitution was drafted. In truth, and in fact, the practice had always been that secretary-treasurers would report to the International Union the list of members to be suspended and the General Secretary-Treasurer of the International Union would notify the secretary-treasurer of a Local Union that these members had been suspended.

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[24] The texts of all the proposed amendments to the Uniform Local Union Constitution, as adopted by the Convention, clarifying the Union's rules regarding "good standing" insofar as Union elections are concerned, are set out in Appendix D at pp. 24a-26a.

The proposed change to the Constitution would apply in the area of elections. So long as a member had not been, in fact, suspended and was currently paid in his dues, then such member, under the General Executive Board's proposal, would be eligible to vote in the Union's election and inquiry into past dilatory payments would be fore-closed in the election area.

Your Committee is of the opinion that the foregoing change would conform the Constitution to the long standing practice of the International Union and should diminish, if not eliminate entirely, unnecessary, tedious, technical investigations and litigation.

Accordingly, therefore, your Committee recommends concurrence in Proposals 30, 35, 45, 48 and 50.

I move for adoption of this portion of the Committee's report, Mr. Chairman.

CHAIRMAN FANCHER: I second the motion.

PRESIDENT MORESCHI: It has been regularly moved and seconded that the convention approve this portion of the Committee's report.

Any remarks?

(No response.)

All in favor of the motion, signify by saying aye.

(Chorus of ayes.)

Contrary, if any?

(No response.)

I declare the motion carried unanimously, and so ordered.[25]

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[25] *Report of Proceedings, 15th Convention, Laborers' International Union of North America,* pp. 237-38.

Upon the adoption of the foregoing constitutional amendments, the Secretary's restrictive interpretation of the 1961 Uniform Local Union Constitution has been entirely nullified for all local unions. Hence, in any future election in Local 125 members claimed by the Secretary as having been improperly qualified to vote and be candidates would be allowed to vote and run for office if they had not, *in fact,* been suspended by the International and were current in the payment of their dues on election day.[26] Accordingly, the 1966 constitutional amendments, in any event, rendered this case moot.

II. THE DISTRICT COURT CORRECTLY HELD THAT THE SECRETARY EXCEEDED HIS STATUTORY AUTHORITY BY ALLEGING IN HIS COMPLAINT THE EXISTENCE OF VIOLATIONS AS TO WHICH THERE HAS BEEN NO EXHAUSTION OF REMEDIES BY THE COMPLAINANT

Insofar as it is relevant to the second question presented, Section 402 of the LMRDA provides as follows:

> (a) A member of a labor organization—
>
> (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body,
>
> * * * * * * *
>
> may file a complaint with the Secretary within one calendar month thereafter alleging the vio-

[26] Article VI, Section 3(d) of the Uniform Local Union Constitution now reads in part:

> "The Secretary-Treasurer, together with a Judge of Election, shall then determine whether such person is current in the payment of his dues and otherwise qualified and entitled to vote." See Proposal No. 45, Appendix D, p. 25a.

> lation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election . . . of officers). . . . .
>
> (b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall . . . bring a civil action against the labor organization . . . to set aside the invalid election . . . .

"It thus appears from the language of the statute itself that the Secretary may proceed to vindicate only those violations with respect to which he has received complaints." *Wirtz* v. *Hotel, Motel and Club Employees, Local 6*, — F. 2d —, 65 LRRM 3032, 3035 (2nd Cir.); *Local 545, etc., Operating Engineers* v. *Wirtz*, — F. 2d —, 65 LRRM 3041 (2nd Cir.). This conclusion is evident from the language of Section 402(b), which provides that "the Secretary shall investigate *such complaint*. . . ." Thus, the remedial authority of the Secretary under Section 402 is confined to matters raised in the complaint which he has received from a member. Accordingly, the instant case may easily be disposed of on the ground that in his complaint Dial asked "the Department of Labor to investigate an election held at Local 125 July 13, 1963" (R. 59), and that the Secretary thus had no authority to go beyond Dial's complaint in seeking to set aside the June 8, 1963 general election.[27]

Dial's protest to the International similarly was confined to challenging the runoff. But the Secretary

[27] Since the runoff election for Business Representative was the only contest conducted on July 13, 1963, it is clear that Dial intended to confine his complaint solely to that contest.

maintains that he is neither limited in his remedial authority by the scope of the complaint which he has received nor by the substantive extent to which the complainant has invoked the remedies available under his union's constitution. Hence, even if the Secretary is not limited to the scope of the member's complaint filed with him, the question remains whether the Secretary may seek to remedy violations which have not been raised by the complainant within his union.

This issue is also amenable to disposition purely on the basis of the statutory language since it is clear that a complaining member is required to "exhaust the remedies available" under the constitution of his union before he may proceed to file his complaint with the Secretary. In this context, exhaustion must connote a thorough and complete utilization of available remedies, which would require that all relevant issues be raised before the union tribunal in order to afford it an opportunity to remedy violations before they are brought to the attention of the Secretary.[28]

Such an understanding of the exhaustion principle is familiar to the courts in the area of reviewing decisions of administrative agencies. As this Court stated in *United States* v. *L. A. Tucker Truck Lines*, 344 U.S. 33, 37:

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[28] ". . . Thus, the Act itself clearly indicates a limitation on the part of the Secretary and the court to consider only matters in which a member has exhausted his internal remedies. This is in line with the legislative purpose to sustain the stability of the union organization by giving it the first opportunity to correct a grievance of an individual member." *Wirtz* v. *Local 9, etc., Operating Engineers*, 366 F. 2d 911, 914 (10th Cir.), *vacated*, 387 U.S. 96.

> Simple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice.

Aside from the statutory language which, on its face, comports with the well-established meaning of exhaustion of remedies, the legislative history, which has been thoroughly reviewed in the brief of *amicus curiae,* incorporated by reference herein, indicates the clearest congressional intention to provide union members with an opportunity for redress of election complaints through the Secretary, only after their union's internal machinery has had an opportunity to consider the protest and determine that relief is not warranted.[29]

For example, the objective of preserving union autonomy to the fullest extent possible is reflected in the report of the Senate Committee on Labor and Public Welfare on S. 1555, the Senate version of the bill as enacted:

> 1. The committee recognized the desirability of minimum interference by Government in the in-

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[29] Professor Archibald Cox, a principal congressional aide in the drafting of the legislation, has commented:

> ". . . Any member who can show that he has pursued in timely fashion the remedies available to him, within the union and any parent body, should be allowed to file a complaint with the Secretary of Labor alleging that a union election violated the statute. Requiring the exhaustion of internal remedies would preserve a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections . . . ." Cox, *The Role of Law in Preserving Union Democracy,* 72 Harv. L. Rev. 609, 633.

> ternal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.
>
> 2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence.[30]

If these principles are to be manifested in the administration of the Act, the statute must not be implemented in a manner which ultimately is certain to make a sham of a union's internal judicial processes. Hence, to preserve confidence in a union's organic laws and tribunals in the regulation of union elections, it is crucial that a member be obligated to avail himself fully of his internal remedies to provide his union with an opportunity to redress his election complaints prior to their coming to the Secretary's attention. A rule which would permit a member to file a limited protest under his union's internal procedures as a mere formality prior to filing a broad-scale complaint with the Secretary would destroy completely

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[30] S. Rep. No. 187, 86th Cong., 1st Sess. 7 (1959), reprinted in NLRB Leg. Hist. 397.

those internal processes of union self-government and regulation which Congress sought to promote and encourage by requiring the prior exhaustion of internal remedies.[31]

Indeed, the Secretary's view as to the scope of the exhaustion of remedies requirement would, if adopted, effectively read out of the statute any exhaustion requirement and render the union's hearings procedures a mere exercise in futility. The International has, for many years, provided full and fair hearings pro-

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[31] The strength and vitality of these processes within the Laborers' International Union is reflected in the following excerpt from the Report of the International's General Executive Board to the Union's October, 1966 Convention:

> In the five years since our last convention, of the 813 cases presented to the General Executive Board for consideration, 359 cases involved protests of nomination and/or election procedures. These are the types of cases which are potentially subject to complaint to the Department of Labor under the election provisions of the Landrum-Griffin Act. These 359 cases break down as follows:
>
> 19—appeals were withdrawn
> 95—appeals sustained
> 245—appeals denied
>
> With respect to the 114 cases which were either withdrawn or sustained, the files were closed and no further complaints were taken to the Department of Labor. The significant figure, however, is that of the 245 cases in which appeals were denied and which were therefore subject to further complaint to the Department of Labor, only 7 cases resulted in litigation following investigation by the Department of Labor, and of these 7 cases the Courts fully approved the decisions reached by the General Executive Board in all but 3 cases. In no case did a court order a special election. We cannot help but express some little pride in our processes and the feeling that our time and effort was well expended.

The complete text of the General Executive Board's report on appeals is set out in Appendix C, at pp. 20a-23a, *infra*.

cedures[32] consistent with the congressional standards set forth in Section 101(a)(5) of the Act, 29 U.S.C. 411(a)(5).[33] Thus, upon receipt of an election protest, the International notifies all affected parties and schedules a hearing at which oral and documentary evidence may be introduced enabling its hearings panel to render judgment upon a reviewable record. Such hearings are held quarterly in order to accommodate the union's decisional processes with the time limitation embodied in Section 402(a)(2) of the Act. The time and effort expended by the International in arriving at a substantive judgment on the record is totally wasted if the Secretary's authority to file a Title IV suit is in no way limited by the issues raised in the union's proceeding.

This Court recognized in *Calhoon* v. *Harvey,* 379 U.S. 134, that Congress intended the Secretary to play a role under Title IV which complements a union's internal processes:

> . . . Section 402 of Title IV, as has been pointed out, sets up an exclusive method for protecting Title IV rights, by permitting an individual member to file a complaint with the Secretary of Labor challenging the validity of any election because of violations of Title IV. Upon complaint the Secre-

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[32] See, Taft, *The Structure and Government of Labor Unions* (1954), pp. 157-161, for an evaluation of the International's procedures for handling appeals in disciplinary and election cases.

[33] Section 101(a)(5) provides as follows:

> No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

> tary investigates and if he finds probable cause to believe that Title IV has been violated, he may file suit in the appropriate district court. It is apparent that Congress decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest .... In so doing Congress, ... decided not to permit individuals to block or delay union elections by filing federal-court suits for violations of Title IV. *Reliance on the discretion of the Secretary is in harmony with the general congressional policy to allow unions great latitude in resolving their own internal controversies,* and, where that fails, to utilize the agencies of Government most familiar with union problems *to aid in bringing about a settlement* through discussion before resort to the courts. (Emphasis added) (Footnote omitted) (*Id.* at 140).

Congress thus intended the Secretary, in the administration of Title IV, to "aid in bringing about a settlement" of a union's "own internal controversies" when they had not been resolved within the union. But, with respect to matters not raised before a union's own tribunals, no "internal controversy" exists and, in such circumstances remedial intervention by the Secretary is both unwarranted and unauthorized.[34]

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[34] The Secretary seeks to justify the broad sweep of his asserted authority by comparison to the role of the General Counsel under the National Labor Relations Act (Pet. Br. p. 47, fn. 27). It is clear, however, that such comparison fails on at least two grounds. First, there is no statutory exhaustion of remedies requirement under the National Labor Relations Act, as a prerequisite to the filing of a charge, which limits the scope of the General Counsel's authority to proceed. Secondly, whereas Title IV limits the filing of complaints to union members who have first exhausted available remedies, the National Labor Relations Act provides that "any person" may file a charge, regardless of whether he is aggrieved or in any way involved in the dispute.

To be sure, under Section 601 the absence of a Title IV complaint in no way limits the Secretary in his ability to investigate and make disclosure concerning the conduct of union elections. Respondent has already discussed at pp. 24-26, *supra,* the interrelationship between the Secretary's remedial authority under Section 402 and his investigatory power under Section 601. See *Wirtz* v. *Local 191, Teamsters,* 321 F. 2d 445 (2d Cir.); *Wirtz* v. *Local 57, Operating Engineers,* 346 F. 2d 552 (1st Cir.). Under Section 601, the Secretary can investigate each and every phase of a union's election and, in fact, if he deemed it necessary he could decide to station himself as an observer at all union elections. However, as to election violations uncovered in the course of such unsolicited investigations, while the Secretary may not institute Title IV proceedings he may report his findings to interested persons and officials, including members of the union, for whatever action they may deem appropriate. *Cf. International Bhd. of Teamsters* v. *Wirtz,* 346 F. 2d 827 (D.C. Cir.). Members who have been thusly alerted to election misconduct may then seek to invoke the union's own appellate procedures and, if unsuccessful, they may resort to the Secretary. Nor are they otherwise without recourse.[35] They may also seek to remove officers guilty of wrongdoing in connection with elections, either

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[35] "Provided with information obtained through such an investigation, responsible members of a labor organization can attempt to prevent recurrences of any violations discovered, can amend the organization's constitution if necessary, and can have the knowledge necessary to take effective action in regulating the affairs of their union. In addition, other labor organizations may profit from particular disclosures with respect to common problems." (Brief for the Secretary, p. 11, *Wirtz* v. *Local 191, Teamsters,* 321 F. 2d 445 (2nd Cir.).

under the provisions of their union's own constitution, or, if these are inadequate, under Section 401(h) of the Act.[36]

In light of the foregoing it is understandable that the Court of Appeals for the Second Circuit recently reached precisely the same conclusion as was arrived at by Judge Connell in the case at bar (R. 5). In *Wirtz* v. *Hotel, Motel and Club Employees' Union, Local 6*, — F. 2d —, 65 LRRM 3032, 3035-36, it declared:

> . . . The legislative history reveals that Congress intended that the Secretary should have the power to bring an action only after a complaining member has exhausted his union remedies. See, for example, remarks of Senator Kennedy, June 12, 1958, [Dep't. Lab.] Legislative History, supra, at 1093; S.Rep. No. 1684, 85th Cong., 2nd Sess. (1958), reprinted in [Dep't. Lab.] Legislative History, supra, at 701.
>
> The Secretary argues strongly for a general power to protect the public interest, but nothing

[36] Section 401(h) provides:

> If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

It is by no means insignificant that the provisions of Section 401(h) are geared to come into play only when a union's own internal procedures are found to be inadequate.

> in the statute or in its legislative background suggests the existence of any such general power. The Secretary's function is, in Senator Kennedy's words, to act as "the (complaining) union member's lawyer." See [Dep't. Lab.] Legislative History, supra, at 1093.

Local 545, etc., Operating Engineers v. *Wirtz*, — F. 2d —, 65 LRRM 3041 (2nd Cir.); *Wirtz* v. *Local 9, etc., Operating Engineers*, 366 F. 2d 911 (10th Cir.), *vacated*, 387 U.S. 96.

It is thus clear that Congress, in the enactment of Title IV, established minimum safeguards to ensure that union elections would be fairly and honestly conducted. It decided to vindicate the public interest through a narrowly-drawn remedial scheme which placed the means for redress in the hands of union members themselves. By so doing, Congress manifested its desire to promote union democracy and preserve unions as free and independent institutions, capable of regulating their own affairs. The Secretary, however, prefers to ignore the clear congressional intent in favor of an unlimited governmental authority to regulate and supervise union elections. It is therefore incumbent upon the Court to reject the distorted view advanced by the Secretary in favor of preserving the carefully-balanced scheme which Congress intended.

CONCLUSION

It is respectfully submitted that, for the reasons set forth above, the decision of the court of appeals should be affirmed. However, in the event that this Court should hold that the action is not moot, respondent is of the opinion that the Court should take this opportunity to decide the question relating to the scope

of the Secretary's authority in Title IV litigation. The Sixth Circuit did not reach this issue. However, the Government's intransigence suggests that only a decision of this Court will ultimately determine the proper interpretation of Sections 402(a) and 402(b) of the Act. Moreover, this point has received sufficient consideration by the lower courts to be considered ripe for adjudication here. Hence, in the event that this issue is reached, it is the opinion of respondent that the Court should affirm the decision of the district court partially dismissing the Secretary's complaint.

Respectfully submitted,

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Attorneys for Respondent

October, 1967

APPENDIX

APPENDIX A

Form LM-2
(JANUARY 1960)
FILE 2 COPIES

U.S. DEPARTMENT OF LABOR
BUREAU OF LABOR-MANAGEMENT REPORTS
WASHINGTON 25, D.C.

LABOR ORGANIZATION FINANCIAL REPORT

Act of September 14, 1959, Public Law 86-257

Section 201 of the Labor-Management Reporting and Disclosure Act of 1959 requires that every labor organization subject to the act shall file with the Secretary of Labor a financial report in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year. Such report must be filed within 90 days after the end of the organization's fiscal year. The use of this form is required for financial reports of all such labor organizations except those labor organizations which are authorized by law to file a simplified report on Form LM-3, or a modification of this form.

See accompanying instructions for help in filling out the form.

1 FULL NAME OF REPORTING LABOR ORGANIZATION (Include local Number, if any) AND MAILING ADDRESS (Street number, city, zone, State)

International Hod Carriers, Builders & common Labor Union
Local #125
29 Fifth Avenue
Youngstown 3, Ohio

2 IF LESS THAN 12 MONTHS IN THIS REPORT ARE KEPT THERE, CHECK BOX ☐ ADDRESS IN ITEM 1

3 FINANCIAL REPORT FOR FISCAL YEAR ENDING: December 31, 1961

4 LABOR DEPARTMENT FILE NO. (Enter the file no. furnished on the Department's acknowledgment of receipt of Form LM-1): 034778

Form LM-2

SCHEDULES FOR STATEMENT OF RECEIPTS AND DISBURSEMENTS

Schedule F—DISBURSEMENTS TO OFFICERS AND EMPLOYEES

(a) OFFICERS.—List salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer during the fiscal year.

NAME (A)	TITLE (B)	SALARY (C)	ALLOWANCES (D)	OTHER DIRECT AND INDIRECT DISBURSEMENTS: EXPENSES, INCLUDING REIMBURSED EXPENSES (E)	OTHER DISBURSEMENTS (Cash or Non-Cash) (F)
1.					
2. William Proverbs	President	$ 865.80	$ -0-	$ 705.00	$
3. James Southerland	Vice-President	390.68	-0-	440.00	
4. Ernest White	Recording Sec't'y.	736.40	-0-	300.00	
5. Martin Mason	Financial Sec't'y.	6,500.00	2,000.00	790.00	
6. Three (3) Members	Executive Board	770.56	-0-	-0-	
7. Three (3) Members	Trustees	720.00	-0-	-0-	
8. Cecil Dial	Business-Agent	6,240.00	2,000.00	775.00	
9. Totals from additional listings (if any)					
10. Totals of items 1 through 9		$ 16,223.44	$ 4,000.00	$ 3,010.00	$ -0-

U. S. DEPARTMENT OF LABOR
Bureau of Labor-Management Reports
Washington 25, D.C.

READ INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM

1. NAME OF LABOR ORGANIZATION (Include local name if any)

International Hod Carriers, Builders and Common Labor Union Local #125 (AFL-CIO)

Calendar Year Ended Dec. 31 2

Name (A)	Title (B)	Status (C)	Disbursements to Officers (D)	Disbursements for Allowances and Other Expenses (E)	Disbursements for Salaries and Other Expenses (F)	Total Disbursements (G)
William Proverbs	Pres.	C.	$ 763	---	521	1 284
James Southerland	VP	C.	240	---	191	431
Martin Mason	F.Sec.	C.	6500	1 960	1418	9 878
Ernest Waite	R. Sec.	C.	600	---	200	800
Cecil Dial	B.Agt.	C.	6240	1-960	687	8 887
Exec. Board (3 members)		C.	724	---	---	724
Trustees (3 members)		C.	720	---	---	720
8 Total from Additional Sheets (if any)						
9 Totals (Lines 1 through 8)			$ 15 787	3 920	3067	24 774

U. S. DEPARTMENT OF LABOR
Bureau of Labor Management Reports
Washington 25, D.C.

LABOR ORGANIZATION ANNUAL REPORT

FORM LM-2 (Revised)

READ INSTRUCTIONS CAREFULLY BEFORE PREPARING REPORT

1. NAME OF LABOR ORGANIZATION (Include local number and affiliation, if any.)
International Hod Carriers, Builders and Common Labor Union Local #125 (AFL-CIO)

2. PERIOD COVERED BY THIS REPORT From Jan. 1 To Dec. 31

3. EMPLOYER NO.

SCHEDULE 8—DISBURSEMENTS TO OFFICERS (See Instructions, Item 56)

Name (A)	Title (B)	Status (C)	Gross Salary (before taxes and other deductions) (D)	Allowances (E)	Other Direct and Indirect Disbursements: Expenses Including Reimbursed Expenses (F)	Other Disbursements (G)	Total (H)
1. William Proverbs	Pres.	P	$ 300	$ 70	$	$	$
2. Ralph Thomas	Pres.	N	328	70			
3. James Southerland	V.P.	C	240	240			
4. Martin Mason	F.Sec.	C	7 301	1 670			
5. Ernest White	R.Sec.	C	657	240	988		
6. Cecil Dial	B.Agt.	P	3 818	1 510			
7. Andrew Jackson	B.Agt.	N	3 105	35			
8. Total from Additional Listings, if any							
9. Totals of lines 1 through 8			$ 15 749	$ 3 635	$ 988	$	$

APPENDIX B

Category I

Cases in which the Secretary (1) obtained court orders and/or stipulations providing that a rerun election or the next regularly scheduled union election would be conducted in compliance with the Act and, in most cases, under the supervision of the Secretary; or (2) was otherwise satisfied that the union would take or had taken steps to remedy violations.

1. Independent Petroleum Workers Union of Bayway, New Jersey, Linden, New Jersey. : July 23, 1960, D.N.J. Election invalidated by a consent decree on June 10, 1961. New election ordered supervised by Secretary.

2. United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry of the United States and Canada, Local 188, Savannah, Georgia. : September 9, 1960, D.Ga. at Augusta. Election invalidated by a consent decree on September 6, 1961. New election ordered supervised by the Secretary.

3. Independent Workers Union of Florida, Jacksonville, Florida. : September 28, 1960, D.Fla. at Jacksonville. Election invalidated by court order on January 4, 1961. New election ordered supervised by Secretary.

4. National Maritime Union, New York, New York. : October 3, 1960, S.D. N.Y. Case withdrawn by Secretary on October 27, 1961. Union stipulated it would conduct future elections in strict accordance with law.

5. Banana Handlers of the International Longshoremen's Association, Local No. 1800, New Orleans, Louisiana: : October 14, 1960, D. La. at New Orleans. Election invalidated by a consent decree on September 13, 1961. New election ordered supervised by the Secretary.

6. International Association of Machinists, District Lodge No. 70, Wichita, Kans. : October 22, 1960, D. Kans. at

Wichita. March 12, 1963, stipulation entered into and approved by the court provided that the Secretary supervise new nominations and a new election for the offices of directing representative and secretary-treasurer.

7. International Longshoremen's Association, Great Lakes District, Buffalo, N.Y. : December 23, 1960, W.D.N.Y. at Buffalo. Pursuant to judgment entered on December 18, 1962, and a stipulation approved by the court, a rerun delegate election of officers was held on March 1, 1963.

8. Laborers' International Union of North America, Local 1142, Pascagoula, Mississippi. : February 8, 1961, S.D. Miss. S.Div. Election rerun June 17, 1961, on union's initiative. Case dismissed October 3, 1961, on basis of stipulation that violations had been remedied.

9. Amarillo General Drivers, Warehousemen and Helpers Local Union No. 577, International Brotherhood of Teamsters, Amarillo, Tex. : May 26, 1961, N. D. Tex. March 19, 1963, ordered new nominations and a new election for the offices of secretary-treasurer and business manager, vice president, recording secretary, and trustee.

10. Communications Workers of America, Local 9201, Portland, Oregon. : May 29, 1961, D. Ore. December 13, 1961, election invalidated by a consent decree. New election ordered supervised by Secretary.

11. Local 78, International Brotherhood of Teamsters, Oakland, Cal. : June 1, 1961, N. D. Cal. Pursuant to stipulation filed by the parties and approved by the court on August 9, 1963, the suit was dismissed. The union stipulated, without admitting the violations alleged in the complaint, that it would conduct all future union officer elections in accordance with its constitution as amended, or as may be amended, and in compliance with the LMRDA.

12. Association Insular De Guardianes De Puerto Rico, Ind., Puerto de Tierra, San Juan. : June 9, 1961, D.P.R.

Election invalidated by consent decree on August 3, 1961. New election ordered supervised by Secretary.

13. Marine Cooks and Stewards Union, San Francisco, Cal. : June 23, 1961, N.D. Cal., S. Div. Stipulation entered on February 14, 1962, agreeing to rerun election and to submitting question of whether permit members should vote, and whether absentee voting should be allowed for decision of court. Court's opinion, denying permit members right to vote and holding absentee balloting should be allowed, entered on May 17, 1962. June 6, 1962, ordered new election.

14. Union de Trabajadores de la Industria Azucarera y Ramas Anexas de la Central Santa Juana, affiliated with Packinghouse Syndicate District No. 9, Caguaz, Puerto Rico. : August 11, 1961, D.C.P.R. Election invalidated by a consent decree on November 16, 1961. New election ordered supervised by the Secretary.

15. Local Union No. 80, Operative Plasterers' and Cement Masons' International Association, AFL-CIO, Cleveland, Ohio. : September 11, 1961, N.D. Ohio. March 14, 1963, stipulation filed which provides that the Secretary shall supervise nominations and a rerun election of officers.

16. Trico Workers Union, Independent, Buffalo, N.Y. : September 25, 1961, W.D. N.Y. March 27, 1963, stipulation entered into resolving dispute over union election procedures. March 4, 1963, election conducted in conformity with amended constitution and bylaws.

17. District Council 21, Brotherhood of Painters, Decorators, and Paperhangers of America, Philadelphia, Pa.: October 10, 1961, E.D. Pa. April 23, 1963, stipulation approved by the court provided that the Secretary supervise nominations and all other phases of an election for the office of secretary-treasurer June 29, 1963.

18. Local 659, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Los

Angeles, Cal. : November 24, 1961, S.D. Cal., Cent. Div. Pursuant to an order of the court entered on September 10, 1963, and a stipulation filed by the parties and approved by the court, the union was given 90 days to amend its constitution and bylaws to eliminate provisions authorizing its business representative to perform executive functions; the union also agreed not to permit any person not an officer and not elected by secret ballot to perform executive functions. On March 17, 1964, the court signed a stipulation for dismissal and order thereon, to the effect that the union had filed a certified copy of its amendment resolution.

19. Amalgamated Local Union No. 355, Jackson Heights, N.Y. : November 28, 1961, E.D.N.Y. Stipulation entered into and approved by the court on January 14, 1963, provided that the union would amend its constitution and hold nominations and an election of officers under the supervision of the Secretary.

20. Brotherhood of Railway Carmen of America, Argentine Lodge 850, Kansas City, Kans. : December 18, 1961, D.Kans. October 8, 1962, ordered that the regular election of officers to be held in December, 1962, be supervised by the Secretary.

21. Carpenters' District Council for Cuyahoga, Lake, Geauga and Ashtabula Counties, Cleveland, Ohio. : April 13, 1962, N.D. Ohio, E. Div. April 11, 1963, stipulation entered into which provides that the Secretary shall supervise the regular nominations and election scheduled to take place during May through July, 1963.

22. Local 88, International Organization of Masters, Mates and Pilots, New York, N.Y. : June 4, 1962, S.D.N.Y. Stipulation filed on May 27, 1963, provided that the American Arbitration Association, under the supervision of the Secretary, would count the ballots cast in the 1961 election by all probationary members with at least 1 year's mem-

bership in the union prior to December 10, 1961, and that all restrictions on the right of probationary members to vote have been removed. The ballot count was held on May 31, 1963.

23. Union de Trabajadores de la Industria Azucarera, Fase Agricola, Guayama, Inc., Local 804 (affiliated with the Packinghouse Workers Syndicate, District No. 9 of Puerto Rico,) Guayama, P.R. : July 6, 1962, D.P.R. December 26, 1962, ordered new nominations and rerun election of officers under the Secretary's supervision.

24. Red Jacket Lodge No. 85, Locomotive Firemen and Enginemen, Buffalo, N.Y. : July 9, 1962, W.D.N.Y. The suit was dismissed July 24, 1964, after the union stipulated that it would comply with the provisions of the LMRDA in the conduct of future elections.

25. Local 1752, International Longshoremen's Association, Moss Point, Miss. : July 9, 1962, S.D. Miss., S. Div. Pursuant to an order of the court entered on December 16, 1963, and a stipulation filed by the parties and approved by the court, an election was held January 9, 1964, under the Secretary's supervision.

26. Old Hickory Rayon Employees' Council, Old Hickory, Tenn. : August 3, 1962, Mid. Dist. Tenn., Nashville Div. Pursuant to an order of the court entered on September 28, 1962, and a stipulation filed by the parties and approved by the court, rerun elections were conducted on October 15, 16, and 30, 1962.

27. Local 611, Laborers' International Union of North America, New Britain, Conn. : November 13, 1962, D. Conn. On August 25, 1964, the court ordered the action held in abeyance for 75 days to permit the parties to settle the matter. By agreement with the union, the Secretary assisted in the conduct of a new election on September 10, 1964.

28. Local 1470, International Brotherhood of Electrical Workers, Kearny, N.J. : December 13, 1962, D.N.J. On April 28, 1965, the court ordered the union to conduct an election of its officers for a full constitutional term of office under the Secretary's supervision. The order was based upon an April 28, 1965, stipulation between the parties.

29. Local 550, Hotel & Restaurant Employees & Bartenders International Union, Bakersfield, Cal. : February 15, 1963, S. Dist. Cal., N. Div. March 4, 1963, complaint dismissed, pursuant to agreement. It was agreed that the Secretary supervise the rerun of nominations and election.

30. Local 1191, Laborers' International Union of North America, Detroit, Mich. : April 12, 1963, E.D. Mich., S. Div. Pursuant to a stipulation filed by the parties and approved by the court, an election was held May 9-16, 1964, under the Secretary's supervision.

31. Local 191, International Brotherhood of Teamsters, Bridgeport, Conn. : April 19, 1963, D. Conn. at Hartford. The court signed an order directing a rerun of the election for the office of secretary-treasurer under the Secretary's supervision within 60 days.

32. Local 560, International Brotherhood of Teamsters, Union City, N.J. : June 3, 1963, D.N.J. On September 24, 1965, the court ordered the union to conduct its next regular nominations and election under the Secretary's supervision, as specified in the stipulation between the parties.

33. Printing Specialties and Paper Products Union 507, International Printing Pressmen and Assistant's Union of North America, Kalamazoo, Mich. : June 17, 1963, W.D. Mich., S. Div. Pursuant to an order of the court entered on June 25, 1963, and a stipulation filed by the parties, an election for officers was held on August 14, 1963, under the Secretary's supervision.

34. Local 69, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Jersey City, N.J. : July 5, 1963, D.N.J. On December 28, 1964, the court granted the Secretary's motion for summary judgment, and ordered the union to conduct new nominations and an election under the Secretary's supervision.

35. Local 424, Teamsters, Warehousemen, Helpers and Production Workers, Independent, Huntington Station, N.Y. : July 9, 1963, E.D.N.Y. Pursuant to an order of the court entered on October 15, 1963, and a stipulation filed by the parties and approved by the court, an election was held on December 20 and 22, 1963, under the Secretary's supervision.

36. International Union of Guards and Watchmen, San Francisco, Cal. : July 30, 1963, N.D. Cal., S. Div. Pursuant to an order of the court entered December 13, 1963, and a stipulation filed by the parties and approved by the court, a mail ballot election to select two vice presidents and five delegates to the International Union Convention was concluded March 20, 1964, and on April 14, 1964, Convention delegates and International Officers held a secret ballot election to select an International President and a Secretary-Treasurer, both rerun elections conducted under the Secretary's supervision.

37. Southern Association for Transportation Employees, Jackson, Miss. : October 25, 1963, S.D. Miss., Jackson Div. On August 31, 1964, the union stipulated that it would amend its constitution and bylaws to provide for new nominations and an election of its general officers in accordance with the provisions of Title IV of the LMRDA. It also agreed to conduct a new election under the Secretary's supervision.

38. Local 169, Laborers' International Union of North America, Reno, Nev. : November 27, 1963, D. Nev. On November 15, 1965, the court set aside the challenged 1963

election and ordered the local to conduct its regular 1966 election under the Secretary's supervision.

39. Local 7, Brotherhood of Carpenters and Joiners, Minneapolis, Minn., and Twin City Carpenters District Council, St. Paul, Minn. : December 27, 1963, D. Minn., Fourth Div. On February 18, 1965, the court ordered Local 7 to conduct new nominations and an election of local officers, council delegates, and business representatives under the Secretary's supervision. The order was based upon a December 18, 1964, stipulation between the parties, which also provided that the council would conduct a new officer election within 30 days after completion of Local 7's new election. The local's election was conducted April 9 and 10, 1965, and the council's election in May, 1965.

40. Local 163, International Brotherhood of Electrical Workers, Wilkes-Barre, Pa. : January 25, 1964, M.D. Pa. at Scranton. On March 30, 1965, the court ordered the union to conduct its upcoming regular nominations and election under the Secretary's supervision. The order was based upon a March 26, 1965, stipulation between the parties.

41. Local 66, Glass Bottle Blowers Association, Washington, Pa. : March 6, 1964, W.D. Pa. On July 2, 1965, the court ordered the union to conduct an election for the office of president under the Secretary's supervision. The order was based upon a June 28, 1965, stipulation between the parties.

42. Carpenters District Council of Suffolk County, United Brotherhood of Carpenters and Joiners of America, Medford, N.Y. : March 27, 1964, E.D. N.Y. On August 5, 1965, the court entered an order enjoining the Council from conducting its June 1966 election and all subsequent elections contrary to the terms of the stipulation between the parties. In accordance with the stipulation, the Council agreed to remove the restrictions whereby it required that

nominations for office in the Council must arise from the local union in which the nominee holds membership, so as to permit nominations for such office by any component local union without regard to whether the candidate for office in the Council holds membership in such component local union.

43. Local 847, Independiente de Santa Isabel, Santa Isabel, P.R. : April 14, 1964, D.P.R. On December 29, 1964, the court set aside the challenged election and ordered the union to conduct a new election under the Secretary's supervision. The order was based upon a December 22, 1964, stipulation between the parties.

44. Midwestern States Regional Council No. IV, International Woodworkers of America, Wausau, Wisc. : April 30, 1964, W.D. Wisc. On July 29, 1965, the court ordered the Council to conduct its next regularly scheduled election under the Secretary's supervision. The order was based upon a July 29, 1965, stipulation between the parties.

45. Local Unions 545, 545A, 545B and 545C, International Union of Operating Engineers, Syracuse, N.Y. : May 7, 1964, N.D.N.Y. On December 5, 1966, the court entered an order declaring the challenged election void and directing the conduct of a new election under the supervision of the Secretary.

46. Pacific Coast District, National Marine Engineers Beneficial Association, San Francisco, Cal. : May 19, 1964, N.D. Cal., S. Div. On January 28, 1966, the court dismissed the suit on the basis of a stipulation between the parties. The stipulation provided that the union would conduct its next regularly scheduled election beginning in June 1966 in accordance with the LMRDA and its constitution and bylaws as amended since the 1963 election.

47. Union de Operadores y Canteros de la Industria del Cemento de Ponce, Independiente, Ponce, P.R. : May 22,

1964, D.P.R. On May 11, 1966, the court approved a stipulation dismissing the suit.

48. Republic Lodge 1987, International Association of Machinists, Huntington, L.I., N.Y. : June 30, 1964, E.D.N.Y. Dismissed on July 26, 1966, pursuant to stipulation providing that the union would conduct its next election in accordance with the Act.

49. Research Development and Technical Employees Union, Arlington, Mass. : July 30, 1964, D. Mass. A stipulation of settlement was filed September 20, 1965. It provided that if the union's membership adopted a constitutional amendment permitting any member in good standing to be eligible to be a candidate for the executive board (as recommended by the union's executive board), the parties would agree to dismiss this action without costs. The amendment was adopted at the union's December 1, 1965, membership meeting. A stipulation of dismissal, dismissing the action with prejudice, was filed January 20, 1966.

50. Trans World Airlines Local Council 24, Air Line Pilots Association, International, New York City, N.Y. : September 18, 1964, E.D.N.Y. On May 10, 1966, the court ordered the union to conduct a new election within 150 days under the Secretary's supervision. The order was based upon a May 9, 1966, stipulation between the parties.

51. Union de Empleados de la Industria del Cristal, Guaynabo, P.R. : November 9, 1964, D.P.R. Default judgment entered February 24, 1965. On May 5, 1965, the union conducted a new election of officers under the Secretary's supervision, as ordered by the court.

52. Local Unions No. 12, 12-A, 12-B, 12-C, 12-D, and 12-E, International Union of Operating Engineers, Los Angeles, Cal. : April 14, 1965, S.D. Cal., Cent. Div. Consent judgment entered December 19, 1966, directing union to con-

duct its next regularly scheduled election pursuant to a stipulation between the parties.

53. Local 15, Insurance Workers International Union, Detroit, Mich. : December 11, 1964, E.D. Mich., S. Div. On October 26, 1965, the court approved a stipulation between the parties and ordered the union to conduct its next regularly scheduled election under the Secretary's supervision.

54. Local 873, United Papermakers and Paperworkers, Prichard, Ala. : December 31, 1964, S.D. Ala., S. Div. The union conducted its next regularly scheduled election on November 3, 1965, and a runoff election on November 17, 1965. It appeared to the Secretary that the new election was conducted in substantial compliance with the LMRDA, and no complaints were filed. On February 23, 1966, the court approved a stipulation dismissing the suit.

55. Air Transport Local 515, Transport Workers' Union of America, Arlington, Mass. : March 8, 1965, D.Mass. A consent decree entered on September 19, 1966, ordered the conduct of a supervised election.

56. Independent Service Employees Union, Long Island City, N.Y. : April 13, 1965, E.D.N.Y. On June 1, 1965, the union stipulated that its April 15, 1965, election was null and void, and agreed to the entering of an order directing it to conduct an election of officers under the Secretary's supervision within 75 days. On October 21, 1965, the court entered an order directing the union to show cause why it should not be held in contempt for failing to comply with the June 1, 1965, order. On November 22, 1965, the court adjudged the union in contempt for disobeying the June 1, 1965, order. On December 6, 1965, the court ordered that the union and its incumbent officers "'may purge themselves of this contempt by conducting an election'' under the Secretary's supervision within 60 days. The election was conducted February 8, 1966.

57. Office Employees' Association, Independent, Whiting, Ind.: June 4, 1965, N.D. Ind., Hammond Div. On September 14, 1965, the court set aside the challenged election and ordered the union to conduct a new election under the Secretary's supervision.

Category II

Cases in which the Secretary was *unsuccessful* in obtaining the relief sought for reasons other than mootness.

1. Laborers' International Union of North America, Local 11, Pittsburgh, Penn. : October 21, 1960, W.D. Pa. Union's motion for summary judgment was granted on October 5, 1962, on the ground that the evidence did not disclose a violation which may have affected the outcome of the election.

2. Local Unions 9, 9-A, 9-B, and 9-C, International Union of Operating Engineers, Denver, Colo. : December 6, 1963, D. Colo. The court held that the Secretary was precluded from challenging election contests as to which there was no internal union exhaustion of remedies but ordered a rerun for one office which had been protested. Subsequently, the litigation was terminated in this Court upon a joint suggestion of mootness. 387 U.S. 96.

3. National Cash Register Employees Independent Union, Dayton, Ohio. : February 14, 1964, S.D. Ohio, E.Div. Defendant's motion for summary judgment granted on April 10, 1967.

4. Local 116, Glass Bottle Blowers Association, Huntington, W.Va. : April 10, 1964, S.D.W.Va. Dismissed without prejudice on April 5, 1967.

5. Union de Operadores y Canteros de la Industria del Cemento de Ponce, Independiente, Ponce, P.R. : May 22,

1964. Dismissed with prejudice by Secretary on ground that in ancillary proceeding the complainant's expulsion from the union had been upheld.

6. Local Unions Nos. 406, 406-A, 406-B, and 406-C, International Union of Operating Engineers, New Orleans, La. : May 22, 1964, E.D. La., New Orleans Div. The court declined to set aside the election because the complainants had not protested the candidate eligibility qualifications in their internal protest to the union. On May 23, 1966, the court entered judgment dismissing the suit.

7. Local 84, Glass Bottle Blowers Association, Kansas City, Kansas. : June 3, 1964, D. Kans. Dismissed by stipulation on April 6, 1967.

8. Great Lakes District Local No. 47, International Organization of Masters, Mates and Pilots, Cleveland, Ohio. : November 9, 1964, N.D.Ohio, E. Div. On December 9, 1965, the court granted the union's motion for summary judgment and dismissed the suit. The court held that the member's complaint to the union was untimely, thus rendering ineffective his later complaint to the Secretary. An order of dismissal was entered December 13, 1965.

9. Local 1466, United Steelworkers of America, Bessemer, Ala. : December 22, 1964, N.D. Ala., S. Div. On December 14, 1965, the court dismissed the suit, holding that it lacked jurisdiction because the complainant failed to exhaust his internal union remedies.

10. Local 386, Utility Workers Union of America, Boston, Mass. : March 22, 1965, D.Mass. The Secretary's motion to dismiss, based on the ground that the complainant had been elected in the union's next regularly scheduled election, was granted on November 17, 1966.

Category III

Cases in which the issue of mootness presented an impediment, in whole or part, to the Secretary's obtaining relief.

1. Local 30, International Union of Operating Engineers, New York City, N.Y. : October 8, 1962, S.D.N.Y. The district court denied the relief sought by the Secretary on the ground that the Government "failed to sustain its burden of proof, specifically required by the statute, that the violation 'may have affected the outcome of the election'." On appeal, decision vacated and case dismissed as moot.

2. Local Unions Nos. 410, 410-A, 410-B, 410-C, International Union of Operating Engineers, Binghamton, N.Y. : November 26, 1962, N.D.N.Y. November 9, 1964, the court denied the Secretary's motion for summary judgment. On July 15, 1965, the court dismissed the suit, holding that the Secretary had not shown by a preponderance of the evidence that the alleged violation may have affected the outcome of the election. On appeal, decision vacated and case dismissed as moot.

3. Local Unions 18, 18A, 18B, and 18C, International Union of Operating Engineers, Cleveland, Ohio. : January 25, 1963, N.D. Ohio, E. Div. Dismissed for mootness on July 28, 1966. A second complaint based upon a member's complaint against the Locals' August 1965 election was filed on March 7, 1966.

4. Local Unions Nos. 825, 825-A, 825-B, and 825-C, International Union of Operating Engineers, Newark, N.J. : May 23, 1963, D.N.J. On June 24, 1966, the court dismissed the original and supplemental complaints. It found the union violated section 401(e) in its 1962 election by failing to notify its members of the requirement that candidates must file declarations of candidacy in January to be eligible for nominations in May, but held the evidence failed to establish the necessary effect upon the outcome

in either election. The court held further that the question of improper notice in the 1962 election became moot because of the adequacy of notice given in the 1965 election.

5. Local 125, Laborers' International Union of North America, Youngstown, Ohio. : February 7, 1964, N.D. Ohio, E. Div. The instant case.

6. Local Union No. 559, United Brotherhood of Carpenters and Joiners of America, Paducah, Kentucky. : March 7, 1964, W.D.Ky., at Paducah. On October 27, 1965, the court overruled the union's motion to dismiss the suit for mootness. On January 3, 1966, the court ordered a new election for Financial Secretary-Business Representative under the Secretary's supervision.

7. Local 153, Glass Bottle Blowers' Association, Washington, Pa. : March 31, 1964, W.D. Pa. No. 57 in this Court.

8. Local 1291, International Longshoremen's Association, Philadelphia, Pa. : May 25, 1964, E.D. Pa. An order was entered on December 22, 1966, dismissing the case as moot because of the conduct of the union's next regularly scheduled election. The case is on appeal to the Court of Appeals for the Third Circuit and is being held in abeyance pending the outcome of the instant case and No. 57.

APPENDIX C

REPORT OF THE GENERAL EXECUTIVE BOARD

St. Louis, Missouri • October 17-21, 1966

To the Officers and Delegates in Attendance at the Fifteenth Convention of the Laborers' International Union of North America

Greetings:

The General Executive Board of the Laborers' International Union of North America hereby submits its report to the Fifteenth Convention of the said International Union, consisting of copies of the Minutes of regular and special meetings of the said Board since the last Convention of this International Union held in Chicago, Illinois, October 16-20, 1961. Because of the great number of appeals cases considered by the Board in the past five years, and the increased expense which printing of same would occasion, we have decided to omit the cases from this printed report. Nevertheless, all of the appeals cases are deemed by the Board to be incorporated herein by reference, and they will be made available to, and same will be reviewed by the Convention Committee on the General Executive Board's Report.

During the five years which have elapsed since our last convention, we have moved from the ranks to the vanguard of the labor movement. This movement to more active participation in the mainstream of economic, political and organizational affairs was made possible by the action of the delegates at the 1961 Convention and the best methods of implementing them will be reflected in these minutes.

In addition to these critical matters of policy, a significant portion of our time and energy was devoted to interpreting and enforcing the organic law of the Union in considering matters raised on appeals. Pursuant to designation by the General President, members of the Gen-

eral Executive Board sat as Panel Members to hear appeals approximately once every three months. This policy of holding quarterly hearings on pending appeals antedates the requirements of federal law providing that hearings of cases and disposition of appeals, under the terms of the Labor-Management Reporting and Disclosure Act of 1959, be rendered to an individual member essentially within a ninety-day period.

Since the last Convention we, as members of the General Executive Board, have considered and decided 813 cases which have been presented to us on appeal. Of this number, 359 cases dealt with protests of nomination and election within affiliated Local Unions and District Councils; 328 involved miscellaneous matters arising upon charges initiated within affiliated Local Unions and District Councils; 38 cases dealt with jurisdictional disputes between affiliates; 51 cases were concerned with orders to show cause in connection with amalgamations, mergers, or revocations of charters; 15 cases pertained to appeals from decisions of the General President, and in 22 cases the appellants requested permission to withdraw their appeals. While the time and expense involved in preparing and hearing the various appeals and in the preparation and submission of reports by the Hearings Panels to the Board is not inconsiderable, such expenditures are, in the Board's opinion, worthwhile and necessary.

Thus, although statistics can, at times, be misleading, the experience of the Board in terms of challenges to its decisions attests to the fairness of its hearings precedures and the justness of its decisions. In the five years since our last convention, of the 813 cases presented to the General Executive Board for consideration, 359 cases involved protests of nomination and/or election procedures. These are the types of cases which are potentially subject to complaint to the Department of Labor under the election pro-

visions of the Landrum-Griffin Act. These 359 cases break down as follows:

19—appeals were withdrawn
95—appeals sustained
245—appeals denied

With respect to the 114 cases which were either withdrawn or sustained, the files were closed and no further complaints were taken to the Department of Labor. The significant figure, however, is that of the 245 cases in which appeals were denied and which were therefore subject to further complaint to the Department of Labor, only 7 cases resulted in litigation following investigation by the Department of Labor, and of these 7 cases the Courts fully approved the decisions reached by the General Executive Board in all but 3 cases. In no case did a court order a special election. We cannot help but express some little pride in our processes and the feeling that our time and effort was well expended.

As well-oiled as our appeals machinery may be, however, there is always room for improvement and innovation. The basic need is for more time. There are just so many hours available and, like a pyramid, if the caseload is increased at the bottom there is a corresponding upward increase in pressure upon the available time of the Board Members. While there are numerous ways to meet these demands in the disposition of the cases, good conscience requires that we give every case, of whatever nature, the kind of thoughtful deliberation which it deserves. Accordingly, in an effort to effect such economies without depreciating quality, the Board, in the early part of this year, gave consideration to the establishment of a fourth Hearings Panel. With this additional panel complementing the other three Panels which hear cases in the Eastern, Central, and Western Regions, the case load can be more equitably distributed among all the Panels and the

needs of the parties who are involved in appeals cases can be better accommodated. Such a fourth Panel will, in the future, be designated where conditions so warrant.

In sum, the past five years have presented to the members of the General Executive Board the unique opportunity of being in the responsible position of passing upon matters affecting nearly half a million members and their families. We realize that this is no small responsibility and we have deliberated and acted upon these matters with the solemnity and seriousness of purpose which they deserve. This report and the said minutes constituting the entire record of such deliberations and actions of the General Executive Board are submitted to this convention for its consideration and action.

APPENDIX D

Proposal No. 30

p. 6. Uniform Local Union Constitution

ARTICLE III, Section 1(h)

PROPOSED: At the end thereof, change the period to a comma and add:

> "provided, however, that any member who has not been suspended and is current in the payment of his dues shall not be deprived, where otherwise qualified, of his right to vote in a regular election of the Local Union."

As so amended, it will read as follows:

> "(h) No person shall be clothed with or acquire or retain the right of membership unless payment of his initiation fee, readmission fee and per capita tax is received by the International Union when due, *provided, however, that any member who has not been suspended and is current in the payment of his dues shall not be deprived, where otherwise qualified of his right to vote in a regular election of the Local Union.*"

* * *

Proposal No. 35

p. 13. Uniform Local Union Constitution

ARTICLE IV, Section 3 D (k) now reads:

> "(k) He shall promptly report to the General Secretary-Treasurer all transfers by members into or out of the Local Union; all members suspended for nonpayment of dues or otherwise, or expelled; all members deceased and the dates of death."

PROPOSED:

> "(k) He shall promptly report to the General Secretary-Treasurer all transfers by members into or out of the Local Union; all members *to be* suspended for

non-payment of dues or otherwise, or expelled; all members deceased and the dates of death."

* * *

roposal No. 45

pp. 23-24. Uniform Local Union Constitution

ARTICLE VI, Section 3(d) now reads:

"(d) As each member in good standing appears for the purpose of voting, he shall report to the Secretary-Treasurer and identify himself. The Secretary-Treasurer, together with a Judge of Election, shall then determine whether such person is a member in good standing of the Local Union and entitled to vote. As each member is qualified, he shall be required to sign his name and book number on a Membership Voting Register, which Register, when the voting has been concluded, shall then be signed, at the end thereof, by the Secretary-Treasurer and the three Judges of Election."

PROPOSED:

To delete fifth line from the top of page 24, which reads: "A member in good standing of the Local Union and . . ." and substitute the following clause: *"Current in the payment of his dues and otherwise qualified and . . ."*

The second sentence of Section (d) would then read:

"The Secretary-Treasurer, together with a Judge of Election, shall then determine whether such person is current in the payment of his dues and otherwise qualified and entitled to vote."

(The remainder of the section remains unchanged)

* * *

Proposal No. 48

p. 30. Uniform Local Union Constitution

ARTICLE VIII, Section 5 now reads:

"Section 5. The monthly dues are due on the first day of the month and unless paid on or before the last day of the following month, the member shall be considered to be in arrears and suspended without notice."

PROPOSED:

"Section 5. The monthly dues are due on the first day of the month and unless paid on or before the last day of the following month, the member shall be *subject to be suspended by the International Union* without notice."

• • •

Proposal No. 50

p. 31. Uniform Local Union Constitution

ARTICLE VIII, Section 7, last sentence thereof, now reads:

"Once the member has defaulted in the payment of dues, as herein provided, the date of suspension referred to in this Section, shall be the first day after the month for which the member's dues were last paid."

PROPOSED:

"Once the member *has been suspended for defaulting* in the payment of dues, as herein provided, the date of suspension referred to in this Section shall be the first day after the month for which the member's dues were last paid."

• • •

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NOS. 57 and 58

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

W. WILLARD WIRTZ, SECRETARY OF LABOR,
Petitioner

v.

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO

W. WILLARD WIRTZ, SECRETARY OF LABOR,
Petitioner

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE THIRD AND SIXTH CIRCUITS

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NO. 57

W. WILLARD WIRTZ, SECRETARY OF LABOR,
Petitioner

v.

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO

NO. 58

W. WILLARD WIRTZ, SECRETARY OF LABOR,
Petitioner

v.

LOCAL UNION NO. 125, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE THIRD AND SIXTH CIRCUITS

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations

(AFL-CIO) with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

The opinions below, jurisdiction, questions presented, and the statutory provisions involved are set out on pp. 1-3, 55-62 of the Government's brief.

INTEREST OF THE AFL-CIO

The AFL-CIO is a federation of 129 national and international labor organizations having a total membership of approximately fourteen million. The Federation seeks to insure that these organizations and their affiliated local unions are responsive to the needs and desires of their members. It also seeks to insure that they are effective instruments for advancing the economic and social interests of the employees they represent. Fulfillment of this dual objective calls for knowledgeable and responsible union leaders, chosen in accordance with standards and procedures freely adopted by each organization, with a minimum of interference from outside sources.

The respondents will naturally be most concerned with the particular facts of the instant cases. But much more is at stake. These cases provide this Court with its first opportunity to consider the scope and nature of the coercive powers accorded the Government by Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat 519, 29 U.S.C. 401 *et seq.*, in the critical area of union elections. Inevitably, the Court's decision will do much toward laying down the ground rules governing any attack upon a union's electoral processes. The AFL-CIO is vitally interested in seeing that this Court is aware of what its decision will mean for union democracy and for union effectiveness. We believe that our presentation will assist the Court in interpreting the Act so as best to promote both individual and organizational rights and responsibilities.

SUMMARY OF ARGUMENT

I

The Second, Third and Sixth Circuits, the three Courts of Appeals, which have passed on the question of whether a second regularly scheduled union election moots a suit by the Government seeking to overturn and rerun a prior election, have all held that the second regularly scheduled election does moot a Title IV case. These decisions are correct, for the Congressional conception of the public interest in union democracy included, as a basic component, the recognition that Government intervention in internal union affairs should be kept to a minimum. Title IV of the Act, therefore, accords the Government a narrow, albeit potent, remedial authority. Thus, in a Title IV suit, the Government must *prove* that the union election sought to be set aside was held under conditions which frustrated the expression of the membership's desires in order to provide the predicate for a district court order setting aside that election.

The Government's argument that Title IV grants it broad regulatory powers comparable to those granted to the National Labor Relations Board is untenable. The fact of the matter is that Congress specifically declined to clothe the Government with broad regulatory powers over union elections similar to those it had granted to the National Labor Relations Board. Congress's action in this regard undermines the Government's general contention that Congress feared that incumbents would perpetuate themselves in office by subtly manipulating the conduct of an election in a manner which is not "demonstrably unlawful". If Title IV had been a response to an overriding suspicion of incumbents, Congress would have accepted the propopals requiring Government-run elections rather than rejecting them. Thus the conclusion to be drawn from what was ac-

cepted and what was rejected during the legislative process is that Congress recognized that a Government-run election of union officers was strong medicine; medicine which would be counter-productive in the overall pursuit of union democracy if too liberally applied. Congress, therefore, limited this remedy to the situation where a rerun is necessary in order to replace officers whose terms of office were demonstrably the result of an election which did not reflect the membership's desires.

There is no reason to believe that the holding that a second regularly scheduled union election moots a suit to overturn and rerun a prior election would create substantial administrative problems. Of the cases instituted between 1960 and 1965 there have been only eight in which mootness has entered the picture. This very small number of cases can be expected to be reduced further as the difficult, still unresolved, legal issues pertaining to the meaning of Title IV are settled. Moreover, there is every reason to believe that the courts can expedite their consideration of these suits, if that proves necessary.

II

In the event that this Court decides that No. 58 is not moot, the Government suggests that the Court should also decide whether the District Court was correct in refusing to allow the Government to expand the case beyond the limits set by the complaining union member in his internal protest to his union. We submit that the District Court's decision in this regard was correct. Sections 402(a) and 402(b) of the Act, which control here, should be read together as a single interconnected entity which limits matters the Government has the power to raise, and the district courts have the jurisdiction to consider, in Title IV suits, to the issues which were first raised by union members with their unions.

In contrast, the Government's position is that these sections are separate and distinct and that it has *carte blanche* to introduce any issue it may choose into Title IV court litigation, if it receives a complaint from a union member who has filed an internal complaint, without regard to whether or not that issue was raised by a member's complaint filed in the internal procedures unions provide for hearing appeals as to the conduct of elections. So far as we have been able to ascertain from our research, the essence of the position we urge has been accepted in every case in the lower courts in which a written opinion discussing this point has been issued, including the opinions of both of the Courts of Appeals which have passed on the point.

The purport of the legislative history of Sections 402(a) and 402(b) is clear. The supporters of Title IV in both Houses of Congress, and especially in the Senate where this portion of the Act was written, recognized that the public interest in union democracy, as they viewed it, would be secured most satisfactorily by insuring that union members who were dissatisfied with some aspect of their organization's election procedures, and who were unable to obtain internal relief, would receive Government assistance in presenting their case in court. As a corollary, the legislators believed that in the absence of any expression of membership dissatisfaction to the union itself, the union members should be free, without Government direction, to set their own rules and regulations and to decide which officers they wished to retain and which officers they wished to unseat by protesting their elections. Congress expressed this conception of the public interest by passing legislation that set up a system which balances union autonomy and Government regulation. This end was achieved by a legislative guarantee that unions would be responsive to their membership. This guarantee was redeemed by authorizing the Government to use its coercive powers for the limited

purpose of helping union members achieve the type of organization that they desire, rather than by authorizing the Government to force its views of how the organization should be governed on the membership without regard to their desires.

We do not argue that in determining whether a particular matter may be raised by the Government the union member's internal complaint should be treated as if it is a formal pleading by a trained lawyer. The touchstone should be the complaining member's intent as revealed by a liberal and sympathetic reading of the complaint. The ultimate inquiry is whether the issue the Government seeks to present is an issue that the union had a fair opportunity to consider and resolve in connection with its consideration of the member's internal appeal.

In short, we suggest that in Title IV Congress placed its trust in the union as the initial tribunal for deciding internal appeals. Thus, the function of the exhaustion of remedies requirement is to insure that adequate respect is given to the Congressional allocation of power by requiring members not to bypass the initial deciding body Congress has chosen to hear their complaints.

The Government argues that its position must be accepted because it is enforcing the public interest in union democracy, not the private interests of complaining union members. There is one glaring difficulty with this argument. It is that the inclusion of Sections 402(a) and 402(b) in the Act, and the underlying legislative history, show that Congress believed that the public interest here was to insure that labor organizations would be what union members wanted them to be, and that a concomitant part of this conception of the public interest was that union autonomy and membership sovereignty should not be undermined by

a governmental bureaucracy which enforces its views rather than the members' views.

The Government also claims that the Congressional grant of broad investigatory powers in the Act must have been intended to allow it to seek to overturn an election on any ground found during an investigation, whether or not that ground had been raised by a member with the union through an internal complaint. However, the Government's broad investigatory powers come from the grant contained in Section 601 of the Act and not from Section 402(b). And there is no requirement of exhaustion of remedies as a precondition to investigations by the Government under Section 601 but there is such a precondition to suits under Title IV. This shows that Congress did intend to allow the Government to investigate matters which it could not bring to court.

III

Section 402(c)(2) of the Act requires the Government to prove that the alleged violation of Section 401 "may have affected the outcome" of the challenged election in order to be entitled to judicial relief. In the event that this Court decides that No. 57 is not moot the Government suggests that the Court should also decide whether the District Court's ruling that the Government had failed to sustain the burden imposed by Section 402(c)(2) was correct. The District Court's decision in this regard is correct.

Section 402(c)(2) is a product of the overall Congressional desire to minimize Government interference with internal union affairs by limiting rerun elections to those cases in which there is a reasonable probability that the alleged violation had a practical effect on the challenged election. This being true, at the very minimum, the Government is required to prove, as the prime element of its case, that a willing candidate was actually disqualified by the

unlawful rule in question. There is no sense in overturning an election on the basis of an allegedly unlawful rule if that rule did not operate to disqualify a single person, who had shown a desire to run for office, from the ballot.

In No. 57, the Government did not meet this minimal standard. The District Court found that the Glass Bottle Blower's 75% meeting attendance requirement in combination with Local 153's rule which severely limiting excused absences violated Section 401(e) of the Act. Given this basic finding, it was incumbent upon the Government, in order to satisfy the requirements of Section 402(c)(2), to prove that a prospective candidate was disqualified from the ballot despite the fact that he had attended 75% of the meetings other than those for which he had a valid excuse. However, the Government only presented evidence concerning one potential candidate, and that candidate had not attended 75% of the meetings other than those for which he had a valid excuse.

The Government suggests that union rules governing eligibility to be a candidate should be judged *in vacuo* and that the question of whether they had a practical effect on the conduct of the challenged election should be ignored. This argument is unsound for it reads the limitations of Section 402(c)(2) out of the Act in all such cases.

ARGUMENT

I

A REGULARLY SCHEDULED UNION ELECTION MOOTS A SUIT BY THE GOVERNMENT SEEKING TO OVERTURN AND RERUN A PRIOR ELECTION

In *Wirtz* v. *Locals 410, etc. Operating Engineers*, 366

F.2d 438, 442 (2nd Cir., 1966) the Court of Appeals stated:

> "The exclusive remedy which Congress has created for challenging a union election, see 29 U.S.C. §483, is a suit by the Secretary to declare the election void and to direct the conduct of a new election. This suit may only be brought after a union member has made a proper complaint to the Secretary and after the Secretary has made a finding of probable cause to believe that a violation of §481 has occurred. Congress intentionally created a narrow remedy under Title IV of LMRDA so that interference with union elections and management would be kept at a minimum. See Calhoon v. Harvey, 379 U.S. 134, 140 (1964).
>
> "In these two cases, the Secretary has no standing to attack the 1965 elections since no member of Local 30 or of Local 410 has filed a valid complaint challenging them. See Wirtz v Local Union No. 125, etc. 231 F. Supp. 590 (N.D. Ohio 1964). It would serve no practical purpose with respect to these locals to declare their 1962 elections void because the terms of office thereby conferred have expired. And because Title IV does not permit the Secretary to seek either to enjoin future elections, or to declare a given candidacy requirement unlawful absent a valid complaint and an investigation of its application to a specific election, cf. Calhoon v Harvey, supra, we conclude that we have no power to afford the Secretary relief and therefore that these cases are moot."

The Third Circuit in No. 57 (57 R.65) and the Sixth Circuit in No. 58 (58 R.112), the two other Courts of Appeals which have passed on the mootness question, have followed the reasoning of the Second Circuit and have reached the same result. The briefs of the respondents in Nos. 57 and 58 set out in detail the legal arguments which support the conclusion that a second regularly scheduled election moots a suit by the Government challenging the legality of the prior election. The essence of these arguments is that the Congressional conception of the public

interest in union democracy included, as a basic component, the recognition that Government intervention in internal union affairs should be kept to a minimum, *see* pp 13-18 *supra*. Title IV of the Act, therefore accords the Government a narrow, albeit potent, remedial authority. Thus, in a Title IV suit, which can only be brought at the behest of and in behalf of complaining union members, the Government must *prove* that the union election sought to be set aside was held under conditions which frustrated the expression of the membership's desires in order to provide the predicate for a district court order setting aside that election and mandating a rerun election to allow the members to choose officers to fill out the displaced officers' terms of office. We submit that these arguments are entirely sound and we incorporate them by reference here. At this point, we will therefore limit ourselves to a few brief observations on the arguments made by the Government.

The Government argues (Gov. Brief 24-25) that Title IV did not create a "narrow remedy", *Locals 410 etc., Operating Engineers, supra,* 366 F.2d at 442, but instead vested it with broad regulatory powers comparable to those granted to the National Labor Relations Board in supervising the conduct of representation elections, *see National Labor Relations Board* v. *A. J. Tower Co.,* 329 U. S. 329 (1946). In effect, the Government's basic position, as we understand it, is that the holding of an election which does not meet the standards of Title IV raises an irrebuttable presumption that future elections run by incumbent officers will not be run fairly, a presumption which overcomes the normal presumption of legality that would attach to them, *see* Section 402(a) of the Act; and that a "laboratory" election run by the Government, a concept developed by the NLRB, *see General Shoe Corp.,* 77 NLRB 124, 127 (1948), is permissible and necessary in order to remove the "taint" of the first election even though the second election

is not "demonstrably unlawful" and could not be challenged separately.

This argument suffers from a fatal flaw. The fact of the matter is that Congress specifically declined to clothe the Government with broad regulatory powers over union elections similar to those it had granted to the NLRB. Senate Report No. 1684, 85th Cong. 2nd Sess., pp. 12-15; United States Department of Labor, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 701 (G.P.O. 1964)[1] makes this perfectly clear:

> "The committee gave careful study to various proposals providing for the conduct of union elections by the National Labor Relations Board upon the request of a small percentage of the members. The committee rejected this approach . . ."

This language undermines the Governmert's general contention (Gov. Brief 21-25) that Congress feared that incumbents would perpetuate themselves in office by subtly manipulating the conduct of elections in a manner which is not "demonstrably unlawful". If Title IV had been a response to an over-riding suspicion of incumbents, Congress would have accepted the proposals requiring Government-run elections rather than rejecting them. For every union election normally involves incumberts seeking their own reelection or the election of their friends and allies. Moreover, as the Government candidly admits (Gov. Brief 34-36), in contrast to the broad cease and desist powers delegated to the NLRB in Section 10 of the National Labor Relations Act, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*, Congress specifically refused to enact proposals which would have allowed the Department of Labor to obtain injunctive relief which looks to the control and regulation of future elections, *see also Wirtz* v. *Hotel,*

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[1] Hereinafter referred to as Leg. Hist.

Motel and Club Employees Union, Local 6, ... F.2d ..., 65 LRRM 3032, 3036 (2nd Cir., July 28, 1967).

We submit that the conclusion to be drawn from what was accepted and what was rejected during the legislative process is that Congress recognized that a Government-run election of union officers was strong medicine; medicine which would be counterproductive in the overall pursuit of union democracy if too liberally applied. Congress, therefore, limited this remedy to the situation where a rerun was necessary in order to replace officers whose terms of office were demonstrably the result of an election which did not reflect the memberships' desires. Congress did not accord the Government a broad roving commission to run "perfect" elections where such a course of action would require the premature termination of the terms of office of validly elected union officers. To put this another way, Congress recognized that rerun elections have costs as well as benefits, and it determined that on balance the benefits outweigh the costs where the Government can prove that the election which is set aside was not a fair expression of the memberships' desires. Where such proof is offered the premature termination of the term of office of an incumbent is necessary to insure that the union will be run as the members wish it run. However, where the rerun election would terminate the tenure of validly elected officers in the name of a prophylactic policy based on a general suspicion of incumbent officers the considerations are quite different. And Congress determined that in the latter situation the costs outweigh the benefits.

In addition to being contrary to Congressional intent, the irrebuttable presumption the Government offers to justify its position suffers from another defect as well. For if the hypothesis upon which it proceeds is accepted, *arguendo*, it would only justify rerunning the elections of a small group of officers, those who controled the election

machinery in the second regularly scheduled election and whose personal conduct in the first election provides some base for the inference that they may resort to unlawful and unfair conduct to perpetuate themselves in office. Thus, reason dictates that the presumption cannot be applicable where an elected committee of rank and file members runs the second election. It cannot be applicable to incumbent officers who have no voice in running elections. It cannot be applicable to officers elected in the first election who were not incumbents. It cannot be applicable where the infirmity in the first election is that the incumbents applied, in a fair and even handed manner, a rule in an international's constitution later held to be invalid. Finally, it cannot apply if the second election results in the election of new officers. The Government, however, does not even advert to existence of any of these common situations and argues that the irrebuttable presumption it proposes justifies allowing it the power to seek a rerun election in every case in which a second regularly scheduled election occurs while a Title IV suit is pending. However, as we have just shown, it is plain that the underlying argument the Government offers is far too narrow in scope to justify the power it seeks.

The list of situations we have just noted also illuminates another point. It demonstrates that the Government seeks a broad and unstructured discretion, which cannot be limited by reference to the policies of the Act since it is not based on or justified by any provision in Title IV, to intervene in internal union affairs. This discretion would allow the Government the power to monitor the results of elections and to overturn them if the "wrong" man wins and to leave them standing if the "right" candidate, in its eyes, prevails. This is a far cry from the Congressional intent behind Title IV which is to insure that the members are free to have an organization responsive to their desires.

Finally, we wish to suggest that the administrative chaos which the Government suggests (Gov. Brief 27-34) will occur unless its position is accepted is overdrawn. As the Laborers show in detail in their brief in No. 58 of the cases instituted by the Government between June 30, 1960 and June 30, 1965 there have been only eight in which mootness has entered the picture. There are factors which indicate that the very small number of cases which have been affected by the mootness doctrine will probably be reduced further in the future. First, the mootness doctrine appears to have caught the Government unaware. Prior to the decision in *Locals 410, etc., Operating Engineers, supra.*, 366 F.2d at 442, the Government was willing to allow cases to remain dormant for one or two years for reasons of litigation strategy, *see Wirtz* v. *Locals 545, etc., Operating Engineers*, 366 F.2d 435, 438 (2nd Cir. 1966). It may be presumed that once the mootness doctrine is definitely established the Government will revamp this strategy or secure protective agreements to cover the problem it creates. Second, the Act is still in its infancy and the proper scope of the exhaustion of internal remedies requirement in Sections 402(a) and 402(b) of the Act, the meaning of the provision requiring the Government to prove that the alleged violation "may have affected the outcome of an election" in Section 402 (c)(2), and the proper scope of the permission which allows unions to set reasonable qualifications on the right to run for office in Section 401(e) are all unsettled. Once these basic points have been definitively resolved it is reasonable to expect that litigation under Title IV will be simplified, and that most suits arising under it will involve questions concerning the application of general principles to particular factual situations; questions which will normally be settled in the district courts without the need for appeals. Indeed, we believe that it is fair to say that the Government's insistence on complicating lawsuits by raising issues not raised by complaining union members,

see Section II, *infra.*, indicates that many of its problems are of its own making. Finally, as the Laborers indicate in their discussion of *Ray* v. *Blair*, 343 U.S. 214 (1952) the Government is insufficiently cognizant of the speed with which the courts can act on election matters. And expedition is possible in this area without imposing a heavy burden on the courts because of the small number of cases necessary to police the Act, a number which reflects the strenuous efforts at voluntary compliance which have been made by the labor movement.

II

IN A TITLE IV LAWSUIT THE GOVERNMENT DOES NOT HAVE THE POWER TO RAISE AND THE DISTRICT COURTS DO NOT HAVE THE JURISDICTION TO CONSIDER MATTERS NOT RAISED BY UNION MEMBERS IN THEIR INTERNAL UNION COMPLAINTS

In the event that this Court decides that No. 58 is not moot, the Government (Gov. Brief 38-49) suggests that the Court should also decide whether the District Court was correct (58 R. 5-14) in refusing to allow the Government to expand the case beyond the limits set by the complaining union member in his internal protest to his union. The validity of this ruling turns on the proper interpretation of Sections 402(a) and 402(b) of the Act, which provide:

> "Sec. 402. (a) A member of a labor organization—
>
> (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or
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> (2) who has invoked such available remedies without obtaining a final decision within three calendar months

after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization."

The Act has now been on the statute books for over six years. During that time, two diametrically opposed positions on the proper interpretation of these Sections have emerged. The first is that Sections 402(a) and 402(b) of the Act are to be read together as a single interconnected entity which limits the matters the Government has the power to raise, and the district courts have the jurisdiction to consider, in Title IV suits, to the issues which were first raised by union members with their unions.

The second position, which has been consistently espoused by the Government (Gov. Brief 44-49), is that Sections 402(a) and 402(b) should be viewed as entirely separate and distinct. The Government's position is that if it

receives a complaint from a union member who has filed an internal complaint as to any matter, it has *carte blanche* to introduce any issue it may choose into Title IV court litigation, without regard to whether or not that issue was raised by the complaint filed in the internal procedures the union provides for hearing appeals as to the conduct of elections.

We submit that the first of these two reading of the Act is the proper one, since it conforms to the accepted canons of legislative interpretation by according full and harmonious effect to both Sections, and since it, and it alone, carries out the Congressional intent as revealed by the legislative history. So far as we have been able to ascertain from our research the essence of our position in this regard has been accepted in every case in the lower courts in which a written opinion discussing this point has been issued, *see* pp. [redacted] *infra*.

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The Sixth Circuit did not reach this question and thus the normal procedure would be for this Court to reject the Government's suggestion and to simply remand the case to the court below for a decision on the merits. However, the Government has fully briefed the question, and it has been considered extensively by the lower courts. We therefore turn to an exploration of it.

1. Sections 402(a) and 402(b) of the Act are the direct outgrowth of Sections 302(a) and 302(b) of S. 3974 (85th Cong., 2nd Sess.) as it was reported by the Senate Labor Committee and as it passed the Senate on June 17, 1958; and of Sections 302(a) and 302(b) of S. 1555 (86th Cong., 1st Sess.) as it was reported by that Committee and as it passed the Senate on April 25, 1959. These bills in turn stemmed from Sections 4(a) and 4(b) of S. 3751 (85th Cong. 2nd. Sess.). as it was introduced by Senator Kennedy on May 5, 1958. The original Landrum-Griffin Bill, H. R. 8342 (86th Cong., 1st Sess.) as it passed the House,

as well as the earlier version of H. R. 8342 which was reported out of Committee, contained a different procedure for judicial enforcement, one providing for direct court actions by union members rather than suits by the Government.[2] The Conference Committee adopted in its entirety and without change, the language of Sections 302(a) and 302(b) of S. 1555 and the Conference Committee's version of the legislation in this regard was enacted into law.

After S. 3974 was reported out of Committee in 1958, there were no changes of substance, so far as the issue presented here is concerned, in the language of what was

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[2] H. R. 8342 as it passed the House provided:

"Sec. 402(a) A member of a labor organization—

(1) who is aggrieved by any violation of section 401, and

(2) who (A) has exhausted the reasonable remedies available under the constitution and bylaws of such organizations and of any national or international labor organization with which such organization is affiliated, or (B) has diligently pursued such available remedies without receiving a final decision within six calendar months after their being invoked, may bring a civil action against such labor organization in any district court of the United States for the district having jurisdiction of such labor organization to prevent and restrain such violation and for such other relief as may be appropriate, including the holding of a new election under the supervision of the Secretary and in accordance with the provisions of this title. Where an election has already been held at the time such action is brought, such election shall be presumed valid pending a final decision thereof, as hereinafter provided, and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(b) For the purposes of this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization in the district in which such labor organization maintains its principal office. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff, or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." Leg. Hist. 828

to become Sections 402(a) and 402(b) of the Act.[3] The enforcement provisions of Title IV did undergo some change during Congress's deliberations, however, the basic structure of the exhaustion of internal remedies requirement was set from the inception of the process that led to the final Act. Thus it is clear that the primary sources for the proper approach to the interrelationship between these Sections are the relevant statements of Senator Kennedy, the original sponsor of the measure, and th majority reports of the Senate Labor Committee on S. 3974 and S. 1555. In his remarks on the floor explaining S. 3751, Senator Kennedy stated:

> "At the present time, if a union member feels that his rights have been jeopardized in an election, he is able to appeal to a State court. I have done some research into that matter, and I believe we have found that only one local union election in recent years has been set aside as a result of an attempt by a member to obtain his rights by appealing to a State court. The classic example of the difficulties involved is that of the 13 members of the teamsters union, who, after weeks and months of litigation, have had to accept a settlement which is highly unsatisfactory in regard to the holding of an election; but the lawyer for the rank-and-

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[3] For the Court's convenience in tracing the evolution of Sections 402(a) and 402(b) of the Act, we have printed the pertinent provisions of S. 3751, S. 3974, S. 1555 and of the Act *seriatum* as an Appendix to this brief. This evolution shows that the following are the only changes made after S. 3974 was reported out of committee. First, S. 3974 required the complaining member to have exhausted internal remedies for four months rather than three, and required the Secretary to bring suit within 30 days rather than 60. Second, the phrase "pertaining to the election and removal of officers" in the first parenthesis in the text of Section 402(a) was not included in Section 302(a) of S. 3974. Third, the provisions relating to a procedure for removing officers, and for court preservation of assets, both of which are found in Section 302(b) of S. 1555 as it passed the Senate and in Section 402(b) of the Act, were not included in Section 302(b) of S. 3974. Fourth, only Section 302(b) of S. 1555 contained a provision relating to service of process.

file members has submitted a bill for $300,000. So that is, I believe, the classic example of the fact that the right of the members to appeal to a State court is useless.

"In the bill we provide the right to appeal to the Secretary of Labor, whenever a member believes that his rights, as provided in the bill in the case of an election, have been denied to him. Then the Secretary of Labor in effect becomes the union member's lawyer. Such a provision is infinitely stronger than any provision now in effect." Cong. Record 10947-10948, Senate, June 12, 1958, Leg. Hist. 1093.

Moreover, the majority reports of the Senate Labor Committee also contain a very explicit explanation of the purpose of the exhaustion of internal remedies requirement contained in Sections 402(a) and 402(b). Thus, Senate Report No. 1684, pp. 12-15, Leg. Hist. 701 states:

"The foregoing provisions are to be enforced by the Secretary of Labor, upon complaint of any union member, through court action similar to the proceedings to lift improper trusteeships. In filing a complaint the member must show that he has pursued any remedies available to him within the union and any parent body in a timely manner. This rule preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections. If the member is denied relief by the union or can obtain no decision from the union one way or the other within 4 months, he may complain to the Secretary."

* * * * * * *

"The committee gave careful study to various proposals providing for the conduct of union elections by the National Labor Relations Board upon the request of a small percentage of the members. The committee rejected this approach for two reasons.

"One fundamental objection is that these proposals turn over to an arm of the State the responsibility for carrying on the internal governmental processes of voluntary associations without any showing that the union officers and members are incompetent or corrupt. Such a measure does not promote freedom or democracy. It reduces self-government. It denies the private responsibility and self-determination which lie at the heart of a voluntary association."[4]

The foregoing portion of the Senate Report is a reflection of the overall philosophy which guided the framers of Sections 402(a) and 402(b) and which they stated as follows in Senate Report 187, 86th Cong. 1st Sess., pp. 5-7, Leg. Hist. 118:

"1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective bargaining agents.

"2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detaineld procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence.

"3. Remedies for the abuses should be direct. Where the law prescribes standards, sanctions for their violation should also be direct. The committee rejects the

[4] The first portion of this statement appears again in Senate Report No. 187, pp. 19-22, Leg. Hist. 778.

notion of applying destructive sanctions to a union, i.e., to a group of working men and women, for an offense for which the officers are responsible and over which the members have, at best, only indirect control. Still more important the legislation should provide an administrative or judicial remedy appropriate for each specific problem."[5]

Two final points should be noted in order to complete the legislative picture. First, while the approach taken in the original Landrum-Griffin Bill, as it passed the House, was different from that taken in the Senate, that bill also required an exhaustion of internal remedies. Thus as to this matter the dominant factions in both Houses of Congress were on one mind, *see* n. 2, p. 18, *supra*, and Cong. Record 15707-15708, House, August 12, 1959, Leg. Hist. 823. Second, the inclusion and retention of the exhaustion of internal remedies requirement was a conscious choice made with full recognition of the consequences it entailed. For a minority of Senators, led by Senator Goldwater, argued vigorously that the provision would hinder the effective enforcement of the statute, *see, e.g.*, Cong. Record 16489, Senate, August 20, 1959, Sen. Goldwater, Leg. Hist. 830; Senate Report No. 187, pp 103-104, Minority Views, Leg. Hist. 783.

2. The purport of this legislative history is clear. The supporters of Title IV in both Houses, and especially in the Senate where this portion of the Act was written,

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[5] With the exception of the above-noted statements, the framers of Sections 402(a) and 402(b) limited themselves to analyses of the bill which track its language and are thus of litfle help in the resolution of the issue presented here. This is also true of the remarks made by the House supporters of the Senate approach. See e.g., Cong. Record 7953-4, Senate, May 5, 1958, Sen. Kennedy, Leg. Hist. 699; Senate Report No. 187, pp. 46-50, Leg. Hist. 780; Cong. Record 7024-5, Senate, April 29, 1959, Sen. Kennedy, Leg. Hist. 808; Daily Cong. Record A-6573, Appendix July 29, 1959, Rep. Brademas, Leg. Hist. 815; House Conference Report 1147, 86th Cong. 2nd. Sess., pp. 33-35, Leg. Hist. 835.

recognized that the public interest in union democracy, as they viewed it, would be secured most satisfactorily by insuring that union members who were dissatisfied with some aspect of their organization's election procedures, and who were unable to obtain internal relief, would receive government assistance in pressing their case in court. As a corollary, the legislators believed that in the absence of any expression of membership dissatisfaction to the union itself, the union's members should be free, without government direction, to set their own rules and regulations, and to decide which officers they wish to retain and which officers they wish to unseat by protesting their elections. The Congressional conception of the public interest rests on three considerations. First, that there is every reason to trust in the probity, judgment and democratic instincts of union members. Second, that the vitality of union democracy would be dissipated if the autonomy of the organization was not respected, and if its internal procedures were bypassed and permitted to atrophy. Third, that union democracy would be subverted if the Government was given discretion to intermeddle in internal union matters as to which no member had a complaint. In short Congress recognized that a limitation on the coercive powers of the Government was an integral component of its overall conception of the public interest in union democracy.

Congress expressed this conception of the public interest by passing legislation that set up a system which balances union autonomy and government regulation. This end was achieved by a legislative guarantee that unions would be responsive to their membership. This guarantee was redeemed by authorizing the Government to use its coercive powers for the limited purpose of helping union members achieve the type of organization they desire, rather than by authorizing the Government to force its views of how the organization should be governed on the membership without regard to their desires. *See, in general,*

Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609 (1959); Mitchell, *Safeguards for Union Democracy* in Slovenko, Ed., Symposium on the Labor-Management Reporting and Disclosure Act of 1959, 135 (1961).

The foregoing, we submit, is the only rational explanation for the inclusion of Section 402(a) in the Act. The requirement that only complaints by union members may be used as a basis for a court suit, and the further limitation that only complaints which have been tendered to the union are a proper predicate for coercive action by the Government, make sense only if it is recognized that the enforcement mechanism of Title IV is the product of the desire: first, to promote the responsibility of the union to its members and equally of the members to their organization; and second, to protect union self-government and membership sovereignty from the overweening weight of an external government bureaucracy. Plainly, the entire remedial scheme is reduced to a logical and practical absurdity if the Government is held to have the power to bring a suit based on matters not raised by union members in their internal complaint. Suppose, for example, that a union has an eligibility rule which the membership wishes to retain and which the Government believes is unsound and should be changed. The union holds an election in 1963 as to which no internal complaint is filed but as to which a direct appeal to the Secretary is made alleging that opposition candidates were threatened with reprisals. No court action is taken because there was no exhaustion of remedies. In 1966, the union holds its next regularly scheduled election and it receives one complaint alleging that the ballot box was stuffed. It investigates and rejects the appeal as unwarranted. The complainant goes to the Government, it investigates and concludes that the complaint is without substance and then files a suit challenging the eligibility requirement. Allowing the Government to

bring suit in the second instance, even though it is plainly barred in the first, would reduce the exhaustion of remedies requirement to a lifeless formality devoid of any actuating principle which explains and justifies its inclusion in the Act. On the other hand, as we have just attempted to show, if the Government is barred from proceeding in both instances, as Congress intended, the compelling logic of the exhaustion of remedies' requirement is preserved.

The cases in which the Government has attempted to litigate issues not raised by the union member may be broken down into two categories. The first category of cases includes those in which allegations are raised by the Government concerning conduct which is said to violate the applicable union constitution or the provisions of the Act, *see Hotel, Motel and Club Employees Union, Local 6, supra.*, 65 LRRM at 3035, or in which the Government challenges provisions of the union's constitution and bylaws as unlawful, *see Locals 545, etc., Operating Engineers* v. *Wirtz*, . . F.2d . ., 65 LRRM 3041 (2nd Cir., July 28, 1967). The second category of cases are those in which the Government seeks to widen an internal complaint specifically directed to an election for a particular office to include elections for other offices run at the same time, see *Wirtz* v. *Locals 9, etc., Operating Engineers*, 366 F.2d 911 (10th Cir., 1966) vacated at moot 387 U.S. 96 (1967), as well as No. 58. The general observations on the function of the exhaustion of internal remedies requirement we have set out thus far are applicable to both of these categories of cases.

First, there can be no doubt that the "conduct" cases are precisely governed by the exact words of Senate Report 1684, p. 12, Leg. Hist. 701 that "[the] rule [requiring exhaustion of remedies] preserves a maximum amount of independence and self government by giving every international union the opportunity to correct improper local elections." A suit based on conduct, which violates a union

constitution, or the safeguards established by the Act, and which was not raised by a union member in an internal complaint plainly runs counter to this [redacted] statement of Congressional intent. The cases challenging provisions of a union's constitution have focused on Section 401(e) which permits unions to set reasonable qualifications on the right to run for office. The very purpose of allowing unions to set reasonable qualifications is to enable each organization to set up a system of self-government responsive to its needs, *see Hotel, Motel and Club Employees Union, Local 6, supra.*, 65 LRRM at 3033-3035. Such a challenge, which does not lend itself to any simple or precise answer, may, therefore, bring into question the most deep-seated assumptions upon which the organization is built, and it may call for a sensitive balancing of considerations of a political nature. Moreover, as No. 58 indicates, most internal appeals do not raise straightforward questions of statutory law. They often raise questions which require an interpretation of the union's constitution, and are usually grounded in particular facts, and in the practices, usages, and traditions of the group. As to these matters the union is the logical agency to which to look for expertise. Thus, as in the conduct cases, the officers of the union must, before the Government's coercive powers are invoked, be allowed the first opportunity to assess the validity of the rule in light of the objections of those members who consider themselves aggrieved by it. Prior consideration of the rule may obviate the need for litigation, or, if litigation proves necessary, may prove illuminating to the courts. In addition, given the nature of the judgment that must be made when a rule is challenged as unreasonable, surely there is no other area of the Act as to which it is as necessary to ascertain the membership's desires. The members know the organization best and if they have all reached the conclusion that they wish to abide by a certain set of rules, the Congressional policy, which is to insure

that the organization is responsive to their desires, is being fulfilled.

The considerations just noted are also relevant in those cases in which the Government attempts to go beyond a complaint, which is limited in terms to a challenge of an election for a specific office, to challenge elections for other offices run at the same time. A complaining member may disapprove of a rule, or conduct, common to the running of all the elections. However, he may also believe that the increased organizational stability which will result if he does not challenge some of the elections is preferable to a rerun of all of them. In other words, he may believe that his aims are accomplished if the union is shown that it has erred, in some respect, in running an election, and that it is not necessary to rerun a number of elections for various offices to accomplish that aim. Or, he may believe that the organization will benefit if the rule in question is overturned in a proceeding in which the costs inherent in a rerun, which may be considerable, are kept to a minimum. Or, he may believe that some of the elected officers are so competent and popular that a rerun of their elections would be a waste of time.

In addition it is reasonable to expect that when a limited complaint is filed the officers whose elections are not put in question normally do not take a part in the internal proceedings of the union. If the Government can expand the members complaint it would mean that the tenure of these officers could be terminated even though they did not have occasion to present their position to the union. In sum whatever the complainent's motives may be, he and his fellow union members know their organization best, and if they have all reached the conclusion that they wish the result of the election for a certain office to stand, the Congressional policy, which is to insure that the organization is responsive to their desires, is being fulfilled. For these reasons, we submit that Congress specifically withheld from

the Government the authority to substitute its judgment for theirs. Indeed when the Government attempts to broaden a complaint focused on an election for a particular office to other elections run at the same time it seizes on a fortuitous circumstance in order to expand its authority. For the union could properly stagger its elections, President one year, Secretary-Treasurer the next, etc. Expansion of a complaint to cover additional offices would plainly make no sense if this course was followed. Moreover Local and International elections may be run at the same time, and it just as plainly makes no sense to say that a challenge to a single Local's election opens the International's to challenge or vice-versa.

At this juncture in our argument we wish to make one point quite clear. We do not contend that in determining whether a particular matter may be raised by the Government the union member's internal complaint should be treated as if it is a formal pleading by a trained lawyer. The touchstone is the complaining member's intent as revealed by a liberal and sympathetic reading of his internal appeal. The ultimate inquiry is whether the issue the Government seeks to present is an issue the union had a fair opportunity to consider and resolve in connection with its consideration of the appeal. Under this standard if the member complains that the ballot box was stuffed, a suit alleging that a provision of the union's constitution governing eligibility of candidates is not a reasonable qualification on the right to run for office should be held to be improper. It plainly does not stem from the member's complaint. Naturally, there will be hard cases in between the extremes—cases which will require some line drawing. But this is normally true in the law, and the dimensions of the problem here seem modest. For unions can and do take steps to see that the complaining member is encouraged to spell out in some detail the areas of his concern in order

to insure that their quasi-judicial procedure for hearing appeals operates in a fair and comprehensive manner. The record thus created will often point the way that a district court should go when this type of factual issue is presented.

In the leading case of *United States* v. *L. A. Tucker Truck Lines,* 344 U. S. 33, 36-37 (1952), Mr. Justice Jackson stated:

> "We have recognized in more than a few decisions and Congress has recognized in more than a few statutes, that orderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts. It is urged in this case that the Commission had a predetermined policy on this subject which would have required it to overrule the objection if made. While this may well be true, the Commission is obliged to deal with a large number of like cases. Repetition of the objection in them might lead to a change of policy, or, if it did not, the Commission would at least be put on notice of the accumulating risk of wholesale reversals being incurred by its persistence. Simple fairness to those who are engaged in the tasks of administation, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice." (footnotes omitted)

We suggest that in Title IV Congress placed its trust in the union as the initial tribunal for deciding election appeals, since it can offer speedy relief after hearing from all the interested parties, and since the questions which will normally be raised in election contests are those as to which it has expertise, *cf. United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574 (1960). Thus, the function of the exhaustion of remedies requirement is analagous to the function of the doctrine stated in *Tucker*. It insures

that adequate respect is given to the Congressional allocation of power by requiring union members not to bypass the initial deciding body Congress has chosen to hear their complaints.

The Laborers demonstrate at length in their brief in No. 58 the painstaking approach they have taken to insure that Congress's trust is respected, an approach which requires a substantial investment of time by the Union's top officers. The conscientious attitude of the Laborers is fully representative of the attitudes of AFL-CIO affiliates. Thus, despite the fact that AFL-CIO unions ran no less than 50,000 elections between 1960 and 1965 the Government instituted only 36 successful cases against them during that time, *see* Appendix B to Respondents brief in No. 58. The significance of this figure is apparent once it is realized that

The Laborers, [redacted] in five years (1961-1966), [redacted] handled 359 election appeals and that 19 were withdrawn, 95 upheld and 245 denied. Of the 245 denied 3 resulted in successful litigation by the Government. We have asked our two largest affiliates, the United Steelworkers of America and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America to detail their experience in handling election appeals in order to supplement the material presented by the Laborers. The UAW's material covers 1963-1966. It shows that the Union received 76 appeals, that it upheld 14, dismissed [illegible] and denied 61. In 1 case in which an appeal was d[illegible] and in 1 upholding an appeal the Executive Board re[illegible] reversed by the Public Review Board instituted by the U.A.W. Of the 61 denials, 1 resulted in successful litigation by the Government. The Steelworkers decided 94 election appeals from 1964 through 1967. In 51 remedial action was ordered. None of the cases in which the appeal was denied resulted in successful litigation by the Government.

3. The essence of the position we urge has been adopted in every case we have found in which the issue presented here has been passed on in a reasoned opinion—including the opinions of both the Courts of Appeals which have addressed themselves to it.

In *Locals 9, etc., Operating Engineers, supra.*, 366 F.2d at 913-914, a case where the complaining member challenged an election for a specific office and the Government tried to broaden its lawsuit to include elections for other offices run at the same time, the Court stated:

> "An examination of the legislative history of the Labor Management Reporting and Disclosure Act discloses that it was one of the most controversial efforts before the Congress in a decade. Two years of extensive public hearings had pointed up the need for legislation that would (a) sustain the internal stability of union organizations, (b) guarantee the individual members a voice in the democratic control of the organization and (c) protect the rights of the individual members.
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> "The debates in the Senate at the time of enactment clearly indicates that all parts of the Act must be read in conjuncion with the other parts. 105 Cong. Rec. 6720 (1959) (remarks of Senator Kennedy).
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> * * * * * * *
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> "Thus, the Act itself clearly indicates a limitation on the part of the Secretary and the court to consider only matters in which a member has exhausted his internal remedies. This is in line with the legislative purpose to sustain the stability of the union organization by giving it the first opportunity to correct a grievance of an individual member."

In *Hotel, Motel and Club Employees Union, Local 6, supra.*, 65 LRRM at 3035-3036, the Second Circuit refused to allow the Government to expand its lawsuit to include allegedly unlawful conduct not complained of by any union member. It stated:

"It appears from the language of the statute itself that the Secretary may proceed to vindicate only those violations with respect to which he has received complaints. The legislative history reveals that Congress intended that the Secretary should have the power to bring an action only after a complaining member has exhausted his union remedies."

* * * * * *

"The Secretary argues strongly for a general power to protect the public interest, but nothing in the statute or in its legislative background suggest the existence of any such general power. The Secretary's function is, in Senator Kennedy's words, to act, as 'the [complaining] union member's lawyer."

See also Local 545, etc. Operating Engineers, supra., 65 LRRM 3041 where the same court refused to allow the Government to expand its lawsuit to include an allegedly unlawful constitutional rule not complained of by any union member.

The leading district court decision was rendered in No. 58 where the court stated (58R. 9, 13):

"Investigation of the deliberations of congress... illuminates the viability of the exhaustion doctrine. At no point did the legislators indicate a willingness to abrogate this traditional requirement in favor of summary action by the federal government; on the contrary, we are confronted at every turn with positive, unequivocal expressions of faith in the ability of unions to regulate their own affairs.

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"Plaintiff here invokes the doctrine of 'public interest' [to advance his position]. Can we place this 'public interest' of which the government is here so solicitous above the interest of the individual members of the union? Unions are voluntary associations, organized by workers to promote their common welfare. The sole reason for this existence is to advance the cause of the individual laborer by negotiating from a position of collective strength to secure favorable wages and work-

> ing conditions. The individual members intrust this strength to the officers of the union, just as the members of this defendant union did by the election of June 8, 1963. It is highly significant that not one voice of protest has been heard from the membership against the conduct of that election. We do not think that the Secretary under the guise of 'public interest' may be permitted to complain when the membership has not; to hold otherwise would in fact, be inimical to true public interest because it would require legislation by judicial fiat. If the members are satisfied, then the government ought to be satisfied."

See also *Wirtz* v. *Locals 406 etc., Operating Engineers,* 254 F. Supp. 962 (U.S. D.C. E.D. La., 1966); *Wirtz* v. *Local 174, Musicians,* 65 LRRM 2972 (U.S. D.C. E.D. La., 1967).

A somewhat different version of this position was taken by the court in *Wirtz* v. *Local 169, Hod Carriers,* 246 F. Supp 741, 751-752 (U.S. D.C. D. Nev., 1965) where the court held:

> "We think the express statutory requirement of exhaustion of internal union remedies must be given effect. We do not, however, believe that it is the intention of the Act to restrict the Secretary's action to the precise complaints asserted by the union member who filed the letter-complaint with the Secretary. The act should receive a practical interpretation governed by common sense and realities. If Congress intended that the union member assert a lawyer-like protest to the Executive Board, covering all the bases by specific averment, and buttressed by evidence of all irregularities in the election, there would be no occasion for an evidentiary investigation by the Secretary.
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> "The act should be construed to mean that the Secretary has, on complaint of a union member, the right to investigate all aspects of the contested election and to base a complaint to the Court on every issue which the defendant union had a fair opportunity to consider and resolve in connection with any member's appeal to the General Executive Board of the union. The Secretary should not be limited to the ground

asserted by the one member who complained to the Secretary."

See also Wirtz v. *Local 450, etc., Operating Engineers,* 63 LRRM 2105 (U.S. D.C. S.D., Tex., 1966); *Wirtz* v. *Hotel and Restaurant Employees Local 705,* 63 LRRM 2315 (U.S. D.C. E.D. Mich. S. D., 1966).

The opinion in *Local 169 Hod Carriers* adds two elements to those recognized in *Locals 9, etc., Operating Engineers, supra, Hotel, Motel and Club Employees Union, Local 6, supra* and No. 58. The first is that unions must view each complaint as presenting an overall issue, not just a private dispute between the particular complaining member and the union, and that it must deal with the complaint accordingly. If, for example, a member alleges that a rule was discriminatorily applied in certain instances the union must look into the overall application of that rule in the challenged election, *see Hotel and Restaurant Employees, Local 705, supra.* This interpretation of the Act may have some merit at least in the limited situation where the complaint raises a broad issue as to which the member fails to adduce adequate proof and the member then secures newly discovered evidence, from the government or otherwise, relevant to the basic issue he raised and resubmits that evidence to the union. Next the court stated, 246 F. Supp. at 752, that there are some basic procedural matters, at least those about which the member would have difficulty securing information, which the union must consider in every appeal whether they were raised or not. We flatly disagree with this proposition. The statutory requirement of exhaustion of remedies contains no exceptions for basic procedural matters—to fashion one is pure judicial legislation. Moreover, this latter point cannot and should not affect the Court's decision

here. For as the court in *Local 169, Hod Carriers, supra,* explicitly recognized the exhaustion of internal remedies requirement is normally applicable, particularly where a matter within the complainant's knowledge is involved. Here there can be no doubt that the complaining member knew that the voters whose eligibility he challenged voted in the general election. Moreover, while we do not believe that the basic rule we propose admits of exceptions, we think it is quite clear that if it does those exceptions should not be worked out in a *dictum* at this point. Rather they should evolve through a process of litigating elucidation as the lower courts apply the basic guidelines set by this Court.

In sum, the status of the law developed by the lower courts is this—every case in point, in which a written opinion has been filed, that we have found, or that the Government has cited, accepts the basic proposition that Section 402(a) and 402(b) are to be read together to limit the [redacted] to issues "the defendant union had a fair opportunity to consider and resolve in connection with any *member's* [*internal*] *appeal. . . .*" *Local 169, Hod Carriers supra,* 246 F.Supp. at 752 (emphasis supplied). It being understood that for some courts issues mean not simply an individual grievance (Was the complainant discriminated against in the application of a union rule?) but the underlying question raised (Was there discrimination in this election in the application of the rule?) On the other hand, there is no case, in which a reasoned opinion has been rendered, which stands for the proposition, advanced by Government, that a member's complaint merely triggers the Government's authority to initiate court action and that the Government then has *carte blanche* to introduce any issue it may choose into the litigation without regard to the scope of the member's internal complaint.

4. We shall now attempt to show that none of the Government's counter arguments disproves the validity of our

position. The Government first argues (Gov. Brief, pp. 17-19, 43-44) that its position must be accepted because it is enforcing the public interest in union democracy, not the private interests of complaining candidates for office. There is one glaring difficulty with this argument. It is that the inclusion of Sections 402(a) and 402(b) in the Act, and the legislative history we have outlined, show that Congress believed that the public interest here was to insure that labor organizations would be what union members wanted them to be, and that a concomitant part of this conception of the public interest was that union autonomy and membership sovereignty should not be undermined by a governmental bureaucracy which enforces its views rather than the membership's views. In short, the aim of Title IV is to provide machinery through which complaining union members may secure assistance in vindicating their position in the courts. There is thus no distinction between the public interest and the interests of complaining members. The Government's argument is in no wise strengthened by its showing, with which we agree, that Title IV protects the rights of all union members not just losing or disqualified candidates. For the issue here is whether the Government can utilize its coercive powers by raising an issue which *no* union member has shown an interest in raising, not whether the Government can raise an issue as to which a member, other than a candidate, has complained.

This conception of the public interest in union democracy, and its method of vindication, is perfectly consistent with this Court's recognition in *Calhoon* v *Harvey*, 379 U.S. 134, 140 (1964) that in Title IV "Congress decided to utilize the special knowledge and discretion of the Secretary in order to best serve the public interest". Under our view the Secretary is still charged with the responsibility of achieving voluntary compliance; of drawing together membership complaints about an election, if there are more than one, and welding them into a single coherent lawsuit; of

giving form and direction to the statute by issuing rules and regulations which serve to guide union officers and union members; of skillfully developing and arguing before the courts the matters raised by union members; and of investigating union members' unproved or half-proved allegations to see if they have substance and should be pressed to vindicate the public interest in union democracy or should be dismissed short of court, thereby saving the union from the expense of defending frivolous and vexatious litigation. Moreover, he does all this at the public's expense rather than at the expense of union members who might not be able to afford to do it for themselves. Plainly, the diligent and sensitive effectuation of all these tasks is a sufficient responsibility for any Government official.

The Government next argues (Gov. Brief 45) that the language of Section 402(b) ("The Secretary shall investigate such complaint and if he finds probable cause to believe that a violation of this Title has occurred . . . he shall . . . bring a civil action . . .") lends some support to its view that a lawsuit brought under that Section may be based on issues other than those raised by union members. If Section 402(b) began by stating, "The Secretary shall investigate *in its entirety* any election about which he has received a complaint . . .," we could see some logic in the Government's argument that the use of the words "if he finds . . . a violation of this Title has occurred . . . he shall . . . bring a civil action" advances its cause. But that is not the way the legislation reads. Instead, Section 402(b) opens by referring to the member's complaint and by limiting the ensuing investigation and resulting suit to the subject matter of that complaint. Once this point is taken into account, the actual import of Section 402(b), read in its entirety, supports our position rather than the Government's, for the reference to the member's complaint is an explicit recognition that Sections 402(a) and 402(b) are related to each other as a single interconnected entity. Since

the Government's powers are explicitly tied to the member's complaint at the start of Section 402(b), it is most logical to conclude that Congress realized that it was unnecessary, in order to manifest its will, to use the redundant "such violation" rather than "a violation."

We have pointed out, pp. 18-19 *supra.*, that the operative language of what was to become Sections 402(a) and 402(b) had hardened into final form as Sections 302(a) and 320(b) of S.3974 (85th Cong., 2nd. Sess.) Nevertheless the Government's argument from the legislative history relies on the language of Section (b) of S.1002 (86th Cong., 1st Sess.) a bill that was not even being considered at the relevant time, to show that the use of the phrase, "a violation" was a conscious rejection of the narrower phrase, "such violation." Moreover, it should be pointed out that S. 1002 was not in any sense an attempt to amend or perfect S. 3974. It was a complex bill which contained a procedure for regulating elections completely different from the one embodied in S. 3974, and in the Act, and it proceeded from far different premises than those shared by the drafters of the final legislation. Clearly, therefore, it is an unlikely source from which to expect enlightment on the intentions of those who actually conceived the Act. Equally unenlightening is the quotation from Senate Report No. 187 for it merely paraphrases rather than explains the language of the Act. In short the Government's linguistic argument is untenable.

The Government also claims (Gov. Brief 45-47) that the Congressional grant of broad investigatory powers in the Act must have been intended to allow it to sue to overturn an election on any ground found during an investigation whether or not that ground had been raised by a member with the union through an internal complaint. This claim springs from an erroneous assumption. There is nothing to indicate that the Government was given broad powers of in-

vestigation by Section 402(b) of the Act. The inference is in the other direction, for investigations under Title IV are tied to the complaint ("The Secretary shall investigate *such* complaint"). Moreover under Section 402(b) the Government is given sixty days to bring suit not sixty days to investigate the complaint. In light of the many tasks the Government must perform as the complainant's lawyer, *see* pp. 36-37 *supra.*, this period does not indicate a Congressional desire to have the government investigate the entire election before deciding whether to file suit. It is a call to swift action not to a broad investigation.

In actuality the Government's broad investigatory powers come from the grant contained in Section 601 of the Act, 29 U.S.C. 521, and the cases it cites (Gov. Brief 45-46) arose under that Section. Once this is recognized the entire scheme of the Act falls into place. For it is then clear that Congress placed a requirement of exhaustion of remedies in Title IV of the Act as a pre-condition to court action to set aside a union election, but that it did not place any such requirement as a pre-condition to investigations by the Government under Section 601, *see Wirtz* v. *Local 191, Teamsters,* 321 F.2d 445 (2nd Cir., 1964). To our mind, this shows that Congress did indeed intend to allow the Government to investigate matters which it could not bring to court. The Government in its zeal to expand its powers fails to realize that instances where it believes there is an uncorrected wrong, but can not secure court relief, are a natural product of the overall balance between union autonomy and government power that Congress struck in this area. For example, if a union member comes to the Government and tells [redacted] that there has been a union election with gross illegalities, and the Government's investigation leads it to the conclusion first, that the allegations are true and second, that there has been no internal protest to the union of any sort, it cannot go to court.

There are sound reasons for this distribution of power when the Government's educational and persuasive functions, as opposed to its coercive functions, are taken into account. For, if the Government's investigation shows that election violations exist which were not discovered by the membership, or to which the members have made no objection, it can inform them and the general public of its findings. The possibility of disclosure, as Congress recognized, has a strong prophylactic effect on union action. Moreover, if investigation indicates fraud or other wrongdoing, disclosure could lead to membership action to remove the officers responsible, *see* Section 401(h) or to criminal proceedings, *see* Section 607. In this regard, it should not be forgotten that the overall title of this act is "The Labor-Management Reporting and Disclosure Act of 1959" and that the title is the reflection of the Congressional belief that disclosure in and of itself is a powerful weapon. As the District of Columbia Circuit noted:

> "The public disclosure functions of Section 601 have a certain similarity of purpose with the disclosure concepts of the Securities and Exchange Act; to a degree each has as its purpose ventilation of facts in which the public at large, as well as a particular segment—here union members— have a genuine interest. A labor union is not a private enterprise. Congress seems to have thought that reporting and disclosure would serve a prophylactic function, deterring some of the corrupt practices and acts of untrustworthiness on the part of union officers which Congress had found prevalent, and would enable union members to govern their organizations more intelligently." *International Brotherhood of Teamsters* v *Wirtz*, 346 F.2d 827, 831 (D.C. Cir., 1965).

Indeed, the fact that the Government has fought to vindicate its broad powers under Section 601 demonstrates that when it is to its advantage it has recognized the force of our argument, and that the Government has relied on the argument in urging successfully that it has the power to

investigate an election even though no complaint has been filed.

The fact that it has been held that the Government can investigate an election about which it has received no complaint indicates that its reliance (Gov. Brief n. 27 pp. 47-48), as an analogy, on cases, such as *National Labor Relations Board* v. *Fant Milling Co.*, 360 U.S. 301 (1959), which delineate the power of the N.L.R.B's General Counsel to expand a charge, is misplaced. For if the analogy were sound it would suggest that the General Counsel, as well as the Secretary of Labor, could investigate a matter without a charge. But he can not. And it would suggest that any person, and not just a union member who has exhausted internal remedies, could file a complaint with the Secretary of Labor, *see National Labor Relations Board* v. *Indiana & Michigan Electric Co.* 318 U.S. 9, 17-18 (1943). But this is clearly not the case. This indicates that the powers of the General Counsel and the Secretary are in no way comparable. The power accorded to either one of them can not be determined by reference to the powers of the other. This is so because the structure of the legislation they administer, and the policies that underlie them, are entirely different.

It is, we believe, the Government's failure to appreciate the balance that Congress struck here that is also responsible for its suggestion (Gov. Brief 48-49) that exhaustion of remedies by a union member was not required in this case because the Government indicated, through a notice to the union after its investigation, that it took the position that the entire general election was unlawful. The purpose of Section 402(a) is to encourage union self-government; and government by the Secretary's suggestion in the form of a threat to take coercive action, rather than through a

process of interaction between the union and its members, may be called any of several things but not self-government. Moreover, it is clear that this argument proves far too much. Since there is no requirement that the Government limit its investigations to elections about which there has been a complaint, this argument, if accepted, would sanction a suit under 402(b) to set aside a union election, about which no member had complained, as long as the Government told the union it believed that the election was unlawful in some respect prior to filing its suit. In short, this argument effectively reads the limitation of Section 402(a) out of this Act.

III

IN NO. 57 THE DISTRICT COURT'S DETERMINATION THAT THE GOVERNMENT FAILED TO PROVE THAT THE ALLEGED VIOLATION AFFECTED THE OUTCOME OF THE ELECTION IS CORRECT

Section 402(c)(2) of the Act requires the Government to prove that the alleged "violation of Section 401 may have affected the outcome of the [challenged] election" in order to be entitled to judicial relief. In No. 57 the District Court ruled that the Government had failed to sustain this burden (57 R. 47). The Third Circuit did not review this portion of the District Court's decision; nevertheless, the Government suggests (Gov. Brief 49-52) that this Court should decide whether the District Court was correct as to this aspect of the case in the event it holds that No. 57 is not moot. Given the posture of the case, the normal procedure would be for this Court to reject the Government's suggestion and to simply remand the case to the court below for a decision on the merits. However, since

the Government has briefed the question we now turn to a brief consideration of it.

The final wording of what was to become Section 402(c)(2) was arrived at in the drafting of Section 302(c) of S. 1555 (86th Cong. 1st Sess.) by the Senate Labor Committee. The Committee added the modifying words "may have" to the phrase "If . . . the court finds . . . that the [alleged] violation affected the outcome . . ." Senate Report No. 187, pp. 46-50, Leg. Hist. 780 explains the meaning of the language chosen in the following words:

> "Section 302(c): Provides for a trial of the issues in proceedings or action brought under this section by the district court. If the court, upon a preponderance of this evidence, finds that (1) an election was not held within the time prescribed by section 301, or (2) a violation of section 301 did or reasonably could have been expected to affect the result of an election, the court is to declare the election void and direct the holding of a new election under supervision of the Secretary of Labor."

See also Cong. Rec. 19765, Senate, Sept. 14, 1959, Sen. Goldwater, Leg. Hist. 838-839.

In *Locals 410, etc. Operating Engineers, supra,* 366 F.2d at 443, the Second Circuit, the only Court of Appeals which has passed on this point, set out the following interpretation of the purport of the language chosen:

> "The proviso was intended to free unions from the disruptive effect of a voided election unless there is a meaningful relation between a violation of the Act and results of a particular election. For example, if the Secretary's investigation revealed that 20 percent of the votes in an election had been tampered with, but that all officers had won by an 8-1 margin, the proviso should prevent upsetting the election. Compare *Wirtz* v. *Local 11, International Hod Carriers,* 211 F. Supp. 408 (W.D. Pa., 1962). But in the cases at bar, the alleged violations *caused the exclusion of willing*

> *candidates* from the ballots. In such circumstances, there can be no tangible evidence available of the effect of this exclusion on the election; whether the outcome would have been different depends upon whether the suppressed candidates were potent vote-getters, whether more union members would have voted had candidates not been suppressed, and so forth. Since any proof relating to effect on outcome must necessarily be speculative, we do not think Congress meant to place as stringent a burden on the Secretary as the district courts imposed here." (emphasis added)

Thus as the discussion relating to election tampering demonstrates the Second Circuit recognized that Section 402(c)(2) was a product of the overall Congressional desire to minimize Government interference with internal union affairs by limiting rerun elections to those cases in which there is a reasonable probability that the alleged violation had a practical effect on the challenged election. In others words, Section 402(c) (2) is part of the general plan of Act which requires the Government to prove, by a preponderance of the evidence, that the challenged election was held under conditions which frustrated the expression of the memberships' desires and not an exception to it. Taking this point into account, as well as the change in language made by the Senate Labor Committee just noted, the Second Circuit then held that if the Government shows that a willing candidate was unlawfully disqualified from the ballot the Government has met the burden of proof imposed on it by Section 402(c)(2). In other words, it freed the Government from the task of making a showing, which it deemed speculative, as to what the results of the election would have been if all willing candidates, who should have been allowed to run, had been allowed to appear on the ballot. We do not believe that the Court of Appeals relaxation of the requirements of Section 402(c)(2) was proper. But the validity of its approach in that regard is not raised by No. 57. However, the Court of Appeals opinion is

plainly correct insofar as it retained the essence of the Congressional desire to limit rerun elections by requiring the Government to prove, as the prime element of its case, that a *willing candidate* was actually disqualified by the unlawful rule in question. This portion of its holdings is sufficient to decide the issue presented in No. 57. The burden of proof thus placed on the Government is plainly consistent with the intent of Congress since it can not be deemed to sanction speculation as to the shape of events which never took place. Moreover the rule suggested is entirely rational since there is plainly no sense in overturning an election on the basis of an allegedly unlawful rule if that rule did not operate to disqualify a single person, who had evidenced a desire to run for office, from the ballot.

In No. 57, the Government did not meet the minimal standard set for it by the Second Circuit's decision in the *Locals 410, etc. Operating Engineers* case. The District Court found that the Glass Bottle Blower's 75% meeting attendance requirement, did not violate Section 401(e) standing alone but was unlawful when combined with Local 153's rule which severely limited excused absences. The illegality found thus inhered in the two rules taken in combination (57R.44). Given this basic finding it was incumbent upon the Government in order to satisfy the requirement of Section 402(c)(2) to prove that some prospective candidate was disqualified from the ballot despite the fact that he had attended 75% of the meetings other than those for which he had a valid excuse. However, the Government only presented evidence concerning one potential candidate, and that candidate had not attended 75% of the meetings other than those for which he had a valid excuse (57R.47).

Following the pattern set in its arguments on the first two issues presented, the Government's argument on this point seeks a result which would read the limitations of

Section 402(c)(2) out of the Act in cases in which a union rule governing eligibility to be a candidate for office is in issue. In effect the Government claims that such rules should be judged *in vacuo* and that the question of whether they had a practical effect on the conduct of the challenged election should be ignored. For the Government argues (Gov. Brief 50-52) that if a rule would have the effect of disqualifying a large percentage of the membership it "may have affected" the outcome of the election even though not a single one of the "disqualified" members desired to run for office whether he was eligible or not. The first difficulty with this argument is that such a union rule is not, necessarily, as the Government apparently assumes, an unreasonable rule under Section 401(e) of the Act. As the Second Circuit held in *Hotel, Motel and Club Employees Union, Local 6, supra,* 65 LRRM at 3034, 3035:

> "In deciding the issue of reasonableness we must keep in mind the fact that the Act did not purport to take away from labor unions the governance of their own internal affairs and hand that governance over either to the courts or to the Secretary of Labor. The Act strictly limits official interference in the internal affairs of unions. See, Calhoon v Harvey, 379 U.S. 134 (1964); Gurton v Arons, 339 F.2d 371, (2d Cir. 1964). The Act prescribes only certain basic minima and leaves the area not covered by these minimum prescriptions to the decisions of the unions themselves."
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> * * * * * *
>
> "Turning to the application of these policies to the present case, we hold that it is not self-evident that basic minimum principles of union democracy require that every union entrust the administration of its affairs to untrained and inexperienced rank and file members."
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> * * * * * *
>
> "The Secretary of Labor make much of the fact that only about 1700 [out of 26,000] members of the union are eligible for election to the 31 elective offices. How-

> ever, when this number is combined with the fact that all members in good standing for one year have the opportunity to become eligible for office by getting themselves elected to seats in the four hundred-odd member Assembly, the numbers, per se, do not seem to us to establish unreasonableness."

The second difficulty is that such a rule simply can not be presumed to be one which works a "mass disqualification of candidates" to use the Government's phrase (Gov. Brief 52). Under Article II, Section 1 of the Constitution of the United States any natural born citizen, over 35 years of age, and a resident within the country for 14 years can run for President. It is surely an absurdity to say that all those in the excluded class are candidates for the Presidency and that Article II Section 1 works a mass disqualification of them. If a person is to be considered a candidate for office there must be a showing that he seeks that office, or that he was selected by others as a contestant for that office. If this is not required the term becomes meaningless.

In sum we urge that in order to satisfy the requirement of Section 402(c)(2) the Government must, at the very least, prove that a union member who desired to run for office, i.e. a willing candidate, was prevented from doing so by an unlawful union rule. Since the Government did not make such a showing in No. 57 the decision of the District Court should be affirmed.

CONCLUSION

For the above stated reasons, as well as those presented by the respondents in Nos. 57 and 58, the decisions of the Third and Sixth Circuits, which hold that each of these cases is moot, should be affirmed. Should this Court hold that the cases are not moot, and should it decide to reach the subsidiary questions presented by the Government, the

decisions of the District Courts in both No. 57 and No. 58 should be affirmed.

Respectfully submitted,

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APPENDIX A

S. 3751, 85th Cong., 2nd Sess., May 5, 1958:

"Sec. 4(a) A member of a labor organization—

(i) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(ii) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary of Labor within four calendar months after an election alleging the violation of any provision of sections 201, 202 or 203 (inclding violation of the constitution and bylaws of the labor organization). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) If the Secretary upon investigation of the complaint finds probable cause to believe that violation of this Act has occurred and has not been remedied, he shall, within thirty days of filing of such complaint, and without disclosing the identity of the complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election under the supervision of the Secretary and in accordance with the provisions of this Act."

S. 3974, 85th Cong., 2nd Sess., June 17, 1958:

"Sec. 302. (a) A member of a labor organization—

(i) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(ii) who has invoked such available remedies without obtaining a final decision within four calendar months after their invocation.

may file a complaint with the Secretary of Labor within one calendar month thereafter alleging the violation of any provision of section 301 (including violation of the constitution and bylaws of the labor organization). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and if he finds probable cause to believe that a violation of this Act has occurred and has not been remedied, he shall, within thirty days of filing of such complaint, or as soon thereafter as possible but in no event after sixty days, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election under the supervision of the Secretary and in accordance with the provisions of this Act and such rules and regulations as the Secretary may prescribe."

S. 1555, 86th Cong., 1st Sess., April 15, 1959:

"Sec. 302. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their innovation.

may file a complaint with the Secretary of Labor within one calendar month thereafter alleging the violation of any provision of section 301 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal

of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The service of summons, subpena or other legal process of a court of the United States upon an officer or agent of a labor organization in his capacity as such shall constitute service upon the labor organization. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization."

The LMRDA as enacted:

"Sec. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall

be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization."

SUPREME COURT OF THE UNITED STATES

No. 58.—October Term, 1967.

W. Willard Wirtz, Secretary of Labor, Petitioner, *v.* Local Union No. 125, Laborers' International Union of North America, AFL–CIO.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[January 15, 1968.]

Mr. Justice Brennan delivered the opinion of the Court.

This is a companion case to No. 57—*Wirtz* v. *Local 153, Glass Bottle Blowers Assn., etc., ante,* at —. Petitioner, the Secretary of Labor, filed the action in the District Court for the Northern District of Ohio, Eastern Division, under § 402 (b) of the Labor Management Reporting and Disclosure Act of 1959, 29 U. S. C. § 482 (b). His complaint challenged the validity of a general election of union officers conducted by the respondent Local Union on June 8, 1963, and the validity of a runoff election for the single office of Business Representative made necessary by a tie vote for that office at the June 8 election. The complaint alleged, in part, violations of § 401 (e), 29 U. S. C. § 481 (e), in permitting members not "in good standing" to vote and to run for office on both occasions. However, the only allegation that internal union remedies had been exhausted, as is required by § 402 (a), was in regard to the runoff election of July 13; the complaint stated that the loser in the runoff election, one Dial, protested and appealed to the General Executive Board of the International Union concerning the conduct of that election and having received a final denial of his protest by the General Executive Board

filed a timely complaint with the Secretary. The District Court held that the omission in the complaint of an allegation that a member complained internally about the conduct of the June 8 general election was fatal to the Secretary's action addressed to that election and dismissed that part of the complaint. 231 F. Supp. 590. The Secretary appealed to the Court of Appeals for the Sixth Circuit. During pendency of the appeal, respondent Local conducted its next regular triennial election of officers. The Court of Appeals thereupon vacated the judgment of dismissal and remanded to the District Court with instructions that the portion of the Secretary's complaint dealing with the June 8 election be dismissed as moot. 375 F. 2d 921.[1] We granted certiorari. 387 U. S. 904. In light of our decision today in *Wirtz* v. *Local 125, etc., ante*, —, the action of the Court of Appeals must be reversed; we there held that "... the fact that the union has already conducted another unsupervised election does not deprive the Secretary of his right to a court order declaring the challenged election void and directing the conduct of a new election under his supervision." *Ante*, —.

In the circumstances we might remand to the Court of Appeals to decide the merits of the Secretary's appeal. The issue on the merits is whether the District Court erred in holding that the Secretary in his suit may not challenge the alleged violations affecting the general election of June 8 because Dial specifically challenged

[1] The order of dismissal in the District Court was entered July 14, 1964. On April 18, 1966, the District Court entered an order granting the Secretary's motion for summary judgment regarding the portion of his complaint directed to the runoff election of July 13, 1963, for the office of Business Representative. The runoff was conducted under the Secretary's supervision on June 11, 1966, the same day the union conducted the unsupervised intervening election. Dial lost the runoff.

only the runoff election of July 13 with respect to the office of Business Representative. The merits of this question have been fully briefed and argued in this Court and the underlying issue of statutory construction has already been the subject of several and conflicting rulings by various federal courts.[2] The interests of judicial economy are therefore best served if we proceed to resolve this important question now.

Respondent Local is governed by the Constitution and the Uniform Local Union Constitution of the Laborers' International Union of North America. Under the Uniform Local Union Constitution as it existed during the period relevant here, a member's good standing was lost by failure to pay membership dues within a specified grace period, and the member was automatically suspended without notice and with loss of all membership rights except the right to readmission (but as a new member) upon payment of a fee. The eligibility of voters and candidates in both elections in this case was determined by reference to a report to the International Union of the names of members for whom a per capita tax had been paid. This report included some 50 to 75 members who were delinquent in the payment of their local dues and had therefore actually lost good standing

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[2] Compare *Wirtz* v. *Hotel Employees Union, Local 6*, 381 F. 2d 800; *Wirtz* v. *Local 9 et al., IUOE*, 386 F. 2d 911; *Wirtz* v. *Local 174, Musicians*, 65 L. R. R. M. 2972; and *Wirtz* v. *Local 450 et al., IUOE*, 63 L. R. R. M. 2105, which more or less support the view of the District Court herein, with *Wirtz* v. *Local 409 et al., IUOE*, 254 F. Supp. 962; *Wirtz* v. *Local 705, Hotel Employees*, 63 L. R. R. M. 2315; and *Wirtz* v. *Local 169, Hod Carriers*, 248 F. Supp. 741, which support a broader view.

These conflicting views particularly justify our resolution of the question without remanding to the Court of Appeals. In contrast, the issue in No. 57, *Wirtz* v. *Local 153*, *ante*, which we did remand to the Court of Appeals, was whether a standard not questioned by any party was properly applied to the particular facts.

under the provisions of the Uniform Local Union Constitution. The cause of this patent disregard of the Local's own constitution was the practice of its Secretary-Treasurer of paying from Local funds the per capita tax of delinquent members selected by him, thus making it appear on the per capita tax report that those members had met their dues obligations when in fact they had not.[3] The Secretary's investigation disclosed that approximately 50 of the members voting in the June 8 general election and approximately 60 voting in the July 13 runoff election were ineligible to vote; and that 16 of the 27 candidates for office in the general election, including Dial's opponent who ultimately won the runoff, were ineligible for the same reason.

The question is one of statutory construction and must be answered by inference since there is lacking an explicit provision regarding the permissible scope of the Secretary's complaint. On the facts of this case we think the Secretary is entitled to maintain his action challenging the June 8 general election because respondent union had fair notice from the violation charged by Dial in his protest of the runoff election that the same unlawful conduct also occurred at the earlier election.[4] We therefore need not consider and intimate no view on the merits of the Secretary's argument that a member's protest triggers a § 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of

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[3] The International Constitution required respondent Local to remit to the International a per capita tax payment of $1 per member per month. These payments were to be made only for members who had in fact made current payment of their dues to the Local.

[4] See *Wirtz* v. *Local 169, Hod Carriers, supra*, n. 2, at 751–753. Although the eligibility of Dial's opponent in the runoff was an issue before the District Court on the Secretary's motion for summary judgment, the judgment was granted on the ground of voter ineligibility; that judgment is not before us.

§ 401 discovered in his investigation of the member's complaint.

We reject the narrow construction adopted by the District Court and supported by respondent limiting the Secretary's complaint solely to the allegations made in the union member's initial complaint. Such a severe restriction upon the Secretary's powers should not be read into the statute without a clear indication of congressional intent to that effect. Neither the language of the statute nor its legislative history provide such an indication; indeed, the indications are quite clearly to the contrary.

First, it is most improbable that Congress deliberately settled exclusive enforcement jurisdiction on the Secretary and granted him broad investigative powers to discharge his responsibilities,[5] yet intended the shape of the enforcement action to be immutably fixed by the artfulness of a layman's complaint which often must be based on incomplete information. The expertise and resources of the Labor Department were surely meant to have a broader play.[6] Second, so to constrict the Secretary would be inconsistent with his vital role, whice we emphasize today in *Wirtz* v. *Local 125, etc., ante*, in protecting the public interest bound up in Title IV. The Act

[5] The Secretary's authority under § 601, 29 U. S. C. § 581, both supplements his investigative mandate under § 402 (b) and authorizes inquiry without regard to the filing of a complaint by a union member. But when the Secretary investigates pursuant to § 601 without a member's complaint, his remedy is limited to disclosure of violations discovered. Whether violations of § 401 uncovered by a § 601 investigation may be the predicate of a member's protest to the union and an enforcement proceeding under § 402 if the union denies relief is a question we need not and do not reach in this case.

[6] Senator Kennedy's reference to the Secretary as the complaining "union member's lawyer," 104 Cong. Rec. 10947, D. L. Leg. Hist. 1093, does not support the District Court's conclusion. The lawyer's function is to use his skills to give shape and substance to his client's often incompletely expressed complaint.

was not designed merely to protect the right of a union member to run for a particular union office in a particular election. Title IV's special function in furthering the general goals of the LMRDA is to insure free and democratic union elections, the regulations of the union electoral process enacted in the Title having been regarded as necessary protections of the public interest as well as of the rights and interests of union members.

We can only conclude, therefore, that it would be anomalous to limit the reach of the Secretary's cause of action by the specifics of the union member's complaint. In an analogous context we rejected such a limiting construction of the National Labor Relations Board's authority to fashion unfair labor practice complaints. *NLRB* v. *Fant Milling Co.*, 360 U. S. 301, 306–309; *National Licorice Co.* v. *NLRB*, 309 U. S. 350, 369.[7]

Respondent argues, however, that the spirit and letter of the statutory requirement that the member first exhaust his internal union remedies before the Secretary may intervene compels the suggested limitation. It contends that even to allow the Secretary to challenge the earlier election for the same violation established as having occurred in the runoff election would be inconsistent with Congress' intention to allow unions first opportunity to redress violations of § 401. This argument is not persuasive.

It is true that the exhaustion requirement was regarded by Congress as critical to the statute's objective of fostering union self-government. By channeling members through the internal appellate processes, Congress hoped to accustom members to utilizing the remedies made available within their own organization; at the same

[7] The fact that the National Labor Relations Act does not require prior exhaustion of internal union remedies does not destroy the analogy; nothing in our holding today dispenses with the exhaustion requirement of § 402 (a).

time, however, unions were expected to provide responsible and responsive procedures for investigating and redressing members' election grievances. These intertwined objectives are not disserved but furthered by permitting the Secretary to include in his complaint at least any § 401 violation he has discovered which the union had a fair opportunity to consider and redress in connection with a member's initial complaint.

Here the Secretary sought to challenge the June 8 general election, alleging that the same unlawful conduct occurring in the runoff affected the general election held only five weeks before. Dial's complaint had disclosed the fraudulent practice with respect to the runoff, and he was apparently able to prove at the hearing before the General Executive Board that that practice enabled nine ineligible members to vote in the runoff election; but his protest was denied because he had lost by 19 votes. The Secretary's investigation, however, discovered that a much larger number of ineligible members had been permitted to vote in that runoff election and that the Secretary-Treasurer responsible for the falsification prepared the per capita tax reports used to determine the eligibility of voters and candidates at both elections. Yet in the face of Dial's evidence raising the almost overwhelming probability that the misconduct affecting the runoff election had also occurred at the June 8 election, the union insists that it was under no duty to expand its inquiry beyond the specific challenge to the runoff election made by Dial. Surely this is not the responsible union self-government contemplated by Congress in allowing the unions great latitude in resolving their own internal controversies. In default of respondent's action on a violation which it had a fair opportunity to consider and resolve in connection with Dial's protest, the Secretary was entitled to seek relief from the court with respect to the June 8 election. Again, Congress having given the

Secretary a broad investigative power cannot have intended that his right to relief be defined by a complaining member's ignorance of the law or the facts or by the artlessness of the member's protests.

Because the complaint as to the June 8 election was dismissed for deficiency in pleading, the factual allegations have not been tried. We therefore reverse the judgment of the Court of Appeals and remand to that court with direction to enter a judgment reversing the District Court's judgment of dismissal and directing further proceedings by that court consistent with this opinion.

It is so ordered.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.